

6-17-2014

State v. Lankford Clerk's Record v. 6 Dckt. 35617

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. Lankford Clerk's Record v. 6 Dckt. 35617" (2014). *Idaho Supreme Court Records & Briefs, All*. 6215.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/6215

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE

SUPREME COURT

OF THE

STATE OF IDAHO

State of Idaho

HORTON

Plaintiff

and

Respondent

VS.

Mark H. Hankford

Defendant

and

Appellant

Appealed from the District Court of the Second
Judicial District for the State of Idaho, in and

for Idaho County

Hon. James V. Gidd District Judge

State Appellate Public

Defender

Attorney for Appellant

Attorney General's
Office

FILED COPY

Filed this

day of JUN 17 2014

20

Supreme Court Court of Appeals
Entered on ATS by

Clerk

By

Deputy

30617

TABLE OF CONTENTS

Motion to Appoint State Appellate Public Defendant on Direct Appeal	5
Order Appointing State Appellate Public Defender on Direct Appeal	7
Motion for Correction or Reduction of Sentence, ICR 35	9
Motion for Hearing	12
Order Granting Motion for Hearing and Notice of Hearing	14
Order for Transport and Return	16
Motion to Dismiss Defendant's Motion for Correction or Reduction of Sentence, ICR 35	18
Amended Order for Transport and Return	20
Order for Transport and Return	22
Minutes (1/22/09)	24
Amended Order for Transport and Return	25
Minutes (2/12/09)	27
Motion for Extension of Time	29
Order Extending Time	31
Order for Transport and Return	33
Motion for Extension of Time	35
Motion for More Time to File Memorandum	37
Order Extending Time	39
Order Extending Time	41
Minutes (4/2/09)	43
Order Rescinding Transport Order	44
Order for Transport and Return	46
Minutes (8/27/09)	48
Order	49
Order	51
Memorandum Decision	53
Second Motion for New Trial	64
Minutes (11/19/09)	81
Order for Transport and Return	82
Amended Second Motion for New Trial	84
Motion to Continue Oral Argument Hearing and Schedule Status Conference	87
Order Continuing Oral Argument Hearing and Scheduling Status Conference	89
Motion for Leave to Withdraw as Counsel of Record	91
Order Granting Jonathon D. Hallin Leave to Withdraw as Co-Counsel of Record	93
Motion to Withdraw	96
Order Granting Motion to Withdraw	98
Order Rescinding Order for Transport and Return	100
Order Appointing Counsel	102
Amended Order Appointing Counsel	104
Motion for Allowance of Attorney Fees and Costs	106
Order for Allowance of Attorney Fees and Costs	107
Minutes (8/19/10)	109

Order for Transport and Return.....	110
Amended Order for Transport and Return.....	112
Motion for Extension of Time.....	114
Order for Extension of Time.....	116
Amended Order for Transport and Return.....	118
Order Regarding Disqualification of Judge.....	120
Order Assigning Judge.....	122
Minutes (2/4/11).....	124
Order for Transport and Return.....	125
Motion for Substitute Counsel.....	127
Minutes (3/1/11).....	129
Second Amended Petition for Second Motion for New Trial.....	131
Defendant's Motion to recuse Judge Jeff Brudie, For Cause.....	136
Order for Transport and Return.....	139
Order Rescinding Transport Order.....	141
Order Regarding Disqualification of Judge.....	143
Order Assigning Judge.....	144
Order Setting Hearing.....	146
Order for Transport and Return.....	148
Defendant's Second Motion for Substitution of Counsel.....	150
Motion for Production of Witness.....	153
Motion to Withdraw.....	155
Minutes (10/11/11).....	158
Order Setting Scheduling Conference.....	160
Order Granting Motion to Withdraw.....	162
Order Appointing Counsel.....	164
Scheduling Order.....	166
Order.....	168
Order for transport and Return.....	169
Order to Seal Motion, Affidavit and Order.....	171
Order.....	172
Second Order to Seal Motion, Affidavit and Order.....	173
Order Appointing Counsel.....	174
Order.....	176
Order.....	177
Motion for Order to Transport Prisoner.....	178
Order to Transport Prisoner.....	180
Order Approving Counsel for Bryan Lankford.....	183
First Motion in Limine: For the Court to Take Judicial Notice of Testimony by Lane Thomas.....	185
Second Motion in Limine: For the Court to Take Judicial Notice of Judgment of Conviction (1/11/08); Rule 35, Motion (2/14/18); and Order (3/18/08) in Latah County Case CR 2007-3656.....	248
Third Motion in Limine: For the Court to Admit "Statement of Lane Thomas" (12/19/2007) Into Evidence.....	275
Minutes (1/30/12).....	382
Order for Appointment of Special Prosecutor.....	383
Order Vacating Hearing.....	385
Order for Payment of Transcript.....	387
Order Vacating Order for transport and Return (Mark Lankford).....	390
Order Vacating Order to Transport Prisoner (Bryan Lankford).....	393
Order.....	396

Order.....	397
Order for Payment for Investigation Services.....	398
Order Setting Scheduling Conference.....	401
Scheduling Order and Order Setting Evidentiary Hearing.....	403
Order for Payment for Services.....	406
Order.....	407
Motion to Strike or Alternatively, for a More Definite Statement...	408
Minutes (1/30/12).....	416
Order Denying Motion to Strike ad Granting Motion for a More Definite Statement.....	419
Order.....	422
Order.....	423
Motion for Payment of Attorneys Fees.....	424
Order for Payment of Attorneys Fees.....	427
Order Regarding Motion in Limine.....	429
Integrated Second Motion for a New Trial, Pursuant to Court Order..	440
Order.....	446
Motion to Unseal One Page of the "Update to the Presentence Report (Dated April 10, 2008).....	447
Amended Scheduling Order and Order Setting Evidentiary Hearing.....	449
Order Granting Motion to Unseal One Page of "Update to the Presentence Report (Dated April 10, 2008)".....	452
Order.....	454
Order.....	455
Order.....	456
Motion for Third Order to Transport Prisoner.....	457
Motion for Extension of Time.....	459
Order.....	462
Order Granting Motion for Extension of time.....	463
Motion for Order to Transport Prisoner, Josephine Guernsey.....	465
Order.....	467
Order.....	468
Motion for Payment of Attorneys Fees.....	469
Order for Payment of Attorneys Fees.....	471
Order to Transport Prisoner, Josephine Guernsey.....	473
Motion to Disqualify.....	476
Minutes (9/20/12).....	478
Motion to Vacate Hearing.....	480
Order Vacating Hearing.....	482
Order for Transport and Return.....	484
Order.....	486
Minutes (10/10/12).....	487
Third Order to transport Prisoner.....	489
Motion for Order Permitting Amendment to Integrated Second Motion for a New Trial; And, Motion to Continue.....	492
Minutes (10/16/12).....	550
Third Ex-Parte Motion Under Seal for Conditional Advance Approval of Defense Investigator at County Expense.....	552
Order Denying Ex parte Motion for Conditional Advance Approval of Defense Investigator at County Expense.....	554
Motion for Order for County Payment to Defense Investigator.....	556
Order.....	559

Motion to Continue Evidentiary Hearing.....	560
Order for Delivery of IDOC Records and Order of Protection.....	565
Order Vacating Hearing.....	568
Order for Payment to Defense Investigator.....	570
Order.....	572
Motion for Payment of Attorneys Fees.....	573
Order for Payment of Attorneys Fees.....	575
Order for Payment for Legal Services.....	577
Motion to Quash Subpoena Duces Tecum.....	578
Order.....	585
Order of Recusal.....	586
Order Requiring Service of Copies of Future Filings on Judge.....	588
Order for Status and Scheduling Statement.....	590
Order Preserving Records.....	592
Order for Payment for Legal Services.....	594
Order for Payment for Legal Services.....	595
Order.....	596
Minutes (2/11/13).....	597
Order Permitting the Filing of an Amended and Consolidated Motion for New Trial.....	599
Order Pre-Approving Defense Investigator Expenses.....	602
Motion for Order for County Payment to Defense Investigator.....	604
Order Following In Camera Review.....	608
Order for Payment for Legal Services.....	612
Order for Payment for Investigation Services.....	613
Order.....	615
Order for Payment for Legal Services.....	616
Order.....	617
Motion for Order Permitting Referenced Exhibits to "Amended and Consolidated Motion for New Trial" to be Filed Under Seal.....	618
Order Requiring Certain Proposed Exhibits to be Filed Under Seal...	621
Amended and Consolidated Second Motion for a New Trial.....	623
Notice of Filing Motion Under Seal.....	788
Motion to Vacate and Continue Evidentiary Hearing.....	790
Motion to Vacate and Continue Evidentiary Hearing.....	793
Motion for Fourth Order to Transport Prisoner.....	796
Motion for Order to Close Portion of Evidentiary Hearing.....	800
Order for Payment of Legal Services.....	802
Minutes (5/20/2013).....	803
Order Unsealing Amended and Consolidated Motion for a New Trial Excepting Two Exhibits.....	806
Order to Transport Prisoner (Mark Lankford).....	808
Amended Fourth Order to Transport Prisoner.....	811
Order.....	814
Order for Payment for Legal Services.....	815
Motion for Approval of Payment for Transcripts, at County Expense..	816
Order for Payment for Transcript.....	821
Order for Payment for Legal Services.....	823
Motion for Order Allowing Testimony by Telephone or Skype.....	824
Minutes (7/17/2013).....	827
Second Order to Transport Prisoner, Josephine Guernsey.....	829
Motion For Second Order to Transport Prisoner, Josephine Guernsey..	832

Minutes (7/29/13)	836
Order Re: Testimony of William Thompson by Telephone	841
Minutes (8/5/13 thru 8/7/13)	843
Motion for Payment of Attorney Fees and Costs	864
Order for Return to Prison of Witness Brian Lankford	866
Order for Payment for Legal Services	868
Order for Payment of Attorney Fees and Costs	869
Order on Exhibits	870
Order Setting Briefing Schedule	882
Order	884
Order for Payment for Legal Services	885
Motion for Extension of Time	886
Order Granting for Extension of Time	889
Order for Payment for Legal Services	891
Order for Payment for Legal Services	892
Order on Motion for New Trial	893
Order on Pending Motion I.C.R. 335 Motion	918
Defendant's Motion for Extension of Time Re: Pending Rule 35 Motion	920
Order Granting Defendant's Motion for Extension of Time Re: Pending Rule 35 Motion	922
Motion for Re-Sentencing Pursuant to Brady Violations and Memorandum in Support	924
Motion to Withdraw, Regarding the Appeal of Order on Motion for New Trial, Motion to Appoint State Appellate Public Defender	934
Notice of Appeal	937
Motion for Order for Payment for Transcripts	942
Order for Payment for Legal Services	945
Order for Payment for Six Transcripts	946
Order Allowing Withdrawal of Counsel for Appeal; Order Appointing State Appellate Public Defender	948
Minutes (2/25/14)	950
Order for Payment for Legal Services	952
Order for Payment for Legal Services	953
Order on Motion for Re-Sentencing Pursuant to Brady Violations	954
Order on ICR 35 Motion	957
Clerk's Certificate	964
Clerk's Certificate Re: Exhibits	966

INDEX

Amended and Consolidated Second Motion for a New Trial	623
Amended Fourth Order to Transport Prisoner	811
Amended Order Appointing Counsel	104
Amended Order for Transport and Return	112
Amended Order for Transport and Return	118
Amended Order for Transport and Return	20
Amended Order for Transport and Return	25
Amended Scheduling Order and Order Setting Evidentiary Hearing	449
Amended Second Motion for New Trial	84
Clerk's Certificate Re: Exhibits	966
Clerk's Certificate	964
Defendant's Motion for Extension of Time Re: Pending Rule 35 Motion	920
Defendant's Motion to recuse Judge Jeff Brudie, For Cause	136
Defendant's Second Motion for Substitution of Counsel	150
First Motion in Limine: For the Court to Take Judicial Notice of Testimony by Lane Thomas	185
Integrated Second Motion for a New Trial, Pursuant to Court Order ..	440
Memorandum Decision	53
Minutes (1/22/09)	24
Minutes (1/30/12)	382
Minutes (1/30/12)	416
Minutes (10/10/12)	487
Minutes (10/11/11)	158
Minutes (10/16/12)	550
Minutes (11/19/09)	81
Minutes (2/11/13)	597
Minutes (2/12/09)	27
Minutes (2/25/14)	950
Minutes (2/4/11)	124
Minutes (3/1/11)	129
Minutes (4/2/09)	43
Minutes (5/20/2013)	803
Minutes (7/17/2013)	827
Minutes (7/29/13)	836
Minutes (8/19/10)	109
Minutes (8/27/09)	48
Minutes (8/5/13 thru 8/7/13)	843
Minutes (9/20/12)	478
Motion for Allowance of Attorney Fees and Costs	106
Motion for Approval of Payment for Transcripts, at County Expense ..	816
Motion for Correction or Reduction of Sentence, ICR 35	9
Motion for Extension of Time	114
Motion for Extension of Time	29
Motion for Extension of Time	35
Motion for Extension of Time	459
Motion for Extension of Time	886

Motion for Fourth Order to Transport Prisoner.....	796
Motion for Hearing.....	12
Motion for Leave to Withdraw as Counsel of Record.....	91
Motion for More Time to File Memorandum.....	37
Motion for Order Allowing Testimony by Telephone or Skype.....	824
Motion for Order for County Payment to Defense Investigator.....	556
Motion for Order for County Payment to Defense Investigator.....	604
Motion for Order for Payment for Transcripts.....	942
Motion for Order Permitting Amendment to Integrated Second Motion for a New Trial; And, Motion to Continue.....	492
Motion for Order Permitting Referenced Exhibits to "Amended and Consolidated Motion for New Trial" to be Filed Under Seal.....	618
Motion for Order to Close Portion of Evidentiary Hearing.....	800
Motion for Order to Transport Prisoner.....	178
Motion for Order to Transport Prisoner, Josephine Guernsey.....	465
Motion for Payment of Attorney Fees and Costs.....	864
Motion for Payment of Attorneys Fees.....	424
Motion for Payment of Attorneys Fees.....	469
Motion for Payment of Attorneys Fees.....	573
Motion for Production of Witness.....	153
Motion for Re-Sentencing Pursuant to Brady Violations and Memorandum in Support.....	924
Motion For Second Order to Transport Prisoner, Josephine Guernsey..	832
Motion for Substitute Counsel.....	127
Motion for Third Order to Transport Prisoner.....	457
Motion to Appoint State Appellate Public Defendant on Direct Appeal	5
Motion to Continue Evidentiary Hearing.....	560
Motion to Continue Oral Argument Hearing and Schedule Status Conference	87
Motion to Dismiss Defendant's Motion for Correction or Reduction of Sentence, ICR 35.....	18
Motion to Disqualify.....	476
Motion to Quash Subpoena Duces Tecum.....	578
Motion to Strike or Alternatively, for a More Definite Statement...	408
Motion to Unseal One Page of the "Update to the Presentence Report (Dated April 10, 2008).....	447
Motion to Vacate and Continue Evidentiary Hearing.....	790
Motion to Vacate and Continue Evidentiary Hearing.....	793
Motion to Vacate Hearing.....	480
Motion to Withdraw.....	155
Motion to Withdraw.....	96
Motion to Withdraw, Regarding the Appeal of Order on Motion for New Trial,	
Motion to Appoint State Appellate Public Defender.....	934
Notice of Appeal.....	937
Notice of Filing Motion Under Seal.....	788
Order Allowing Withdrawal of Counsel for Appeal; Order Appointing State Appellate Public Defender.....	948
Order Appointing Counsel.....	102
Order Appointing Counsel.....	164
Order Appointing Counsel.....	174
Order Appointing State Appellate Public Defender on Direct Appeal..	7
Order Approving Counsel for Bryan Lankford.....	183

Order Assigning Judge	122
Order Assigning Judge	144
Order Continuing Oral Argument Hearing and Scheduling Status Conference	89
Order Denying Ex parte Motion for Conditional Advance Approval of Defense Investigator at County Expense	554
Order Denying Motion to Strike ad Granting Motion for a More Definite Statement	419
Order Extending Time	31
Order Extending Time	39
Order Extending Time	41
Order Following In Camera Review	608
Order for Allowance of Attorney Fees and Costs	107
Order for Appointment of Special Prosecutor	383
Order for Delivery of IDOC Records and Order of Protection	565
Order for Extension of Time	116
Order for Payment for Investigation Services	398
Order for Payment for Investigation Services	613
Order for Payment for Legal Services	577
Order for Payment for Legal Services	594
Order for Payment for Legal Services	595
Order for Payment for Legal Services	612
Order for Payment for Legal Services	616
Order for Payment for Legal Services	815
Order for Payment for Legal Services	823
Order for Payment for Legal Services	868
Order for Payment for Legal Services	885
Order for Payment for Legal Services	891
Order for Payment for Legal Services	892
Order for Payment for Legal Services	945
Order for Payment for Legal Services	952
Order for Payment for Legal Services	953
Order for Payment for Services	406
Order for Payment for Six Transcripts	946
Order for Payment for Transcript	821
Order for Payment of Attorney Fees and Costs	869
Order for Payment of Attorneys Fees	427
Order for Payment of Attorneys Fees	471
Order for Payment of Attorneys Fees	575
Order for Payment of Legal Services	802
Order for Payment of Transcript	387
Order for Payment to Defense Investigator	570
Order for Return to Prison of Witness Brian Lankford	866
Order for Status and Scheduling Statement	590
Order for Transport and Return	110
Order for Transport and Return	125
Order for Transport and Return	139
Order for Transport and Return	148
Order for Transport and Return	16
Order for transport and Return	169
Order for Transport and Return	22
Order for Transport and Return	33

Order for Transport and Return.....	46
Order for Transport and Return.....	484
Order for Transport and Return.....	82
Order Granting Defendant's Motion for Extension of Time Re: Pending Rule 35 Motion.....	922
Order Granting for Extension of Time.....	889
Order Granting Jonathon D. Hallin Leave to Withdraw as Co-Counsel of Record	93
Order Granting Motion for Extension of time.....	463
Order Granting Motion for Hearing and Notice of Hearing.....	14
Order Granting Motion to Unseal One Page of "Update to the Presentence Report (Dated April 10, 2008)".....	452
Order Granting Motion to Withdraw.....	162
Order Granting Motion to Withdraw.....	98
Order of Recusal.....	586
Order on Exhibits.....	870
Order on ICR 35 Motion.....	957
Order on Motion for New Trial.....	893
Order on Motion for Re-Sentencing Pursuant to Brady Violations.....	954
Order on Pending Motion I.C.R. 335 Motion.....	918
Order Permitting the Filing of an Amended and Consolidated Motion for New Trial.....	599
Order Pre-Approving Defense Investigator Expenses.....	602
Order Preserving Records.....	592
Order Re: Testimony of William Thompson by Telephone.....	841
Order Regarding Disqualification of Judge.....	120
Order Regarding Disqualification of Judge.....	143
Order Regarding Motion in Limine.....	429
Order Requiring Certain Proposed Exhibits to be Filed Under Seal...	621
Order Requiring Service of Copies of Future Filings on Judge.....	588
Order Rescinding Order for Transport and Return.....	100
Order Rescinding Transport Order.....	141
Order Rescinding Transport Order.....	44
Order Setting Briefing Schedule.....	882
Order Setting Hearing.....	146
Order Setting Scheduling Conference.....	160
Order Setting Scheduling Conference.....	401
Order to Seal Motion, Affidavit and Order.....	171
Order to Transport Prisoner (Mark Lankford).....	808
Order to Transport Prisoner.....	180
Order to Transport Prisoner, Josephine Guernsey.....	473
Order Unsealing Amended and Consolidated Motion for a New Trial Excepting Two Exhibits.....	806
Order Vacating Hearing.....	385
Order Vacating Hearing.....	482
Order Vacating Hearing.....	568
Order Vacating Order for transport and Return (Mark Lankford).....	390
Order Vacating Order to Transport Prisoner (Bryan Lankford).....	393
Order.....	168
Order.....	172
Order.....	176
Order.....	177

Order	396
Order	397
Order	407
Order	422
Order	423
Order	446
Order	454
Order	455
Order	456
Order	462
Order	467
Order	468
Order	486
Order	49
Order	51
Order	559
Order	572
Order	585
Order	596
Order	615
Order	617
Order	814
Order	884
Scheduling Order and Order Setting Evidentiary Hearing	403
Scheduling Order	166
Second Amended Petition for Second Motion for New Trial	131
Second Motion for New Trial	64
Second Motion in Limine: For the Court to Take Judicial Notice of Judgment of Conviction (1/11/08); Rule 35, Motion (2/14/18); and Order (3/18/08) in Latah County Case CR 2007-3656	248
Second Order to Seal Motion, Affidavit and Order	173
Second Order to Transport Prisoner, Josephine Guernsey	829
Third Ex-Parte Motion Under Seal for Conditional Advance Approval of Defense Investigator at County Expense	552
Third Motion in Limine: For the Court to Admit "Statement of Lane Thomas" (12/19/2007) Into Evidence	275
Third Order to transport Prisoner	489

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567 0551
jay.dr.juris@gmail.com
ISBN 6383

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 12:16 O'CLOCK P.M.

APR 26 2013

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

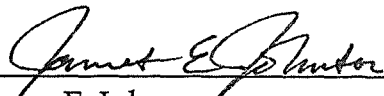
STATE OF IDAHO,	)	CR 83-20158
Plaintiff,)	
)	
	)	NOTICE OF FILING MOTION
	)	UNDER SEAL
v.)	
)	
MARK HENRY LANKFORD,)	
Defendant.)	
_____)	

Comes now the Defendant, through his attorney of record James E. Johnson, and serves notice that he is filing his Amended And Consolidated Second Motion For a New Trial under seal, pursuant to the Order Following In Camera Review, filed March 8, 2013. Filing the motion under seal is done in an abundance of caution in respect to the Order Following In Camera Review, particularly paragraph one of the Protective Order. The Defendant seeks that the Court review the motion and order it unsealed, should the Court determine that the parameters of the Protective Order have been met. The

Defendant submits that no quote from the "Subpoenaed Materials" is provided within the body of the motion, but the motion refers to substance of those materials.

In compliance with the Order Requiring Certain Proposed Exhibits To Be Filed Under Seal, two exhibits have been included in the motion which are under seal, and at this time the Defendant is not seeking that those exhibits be unsealed.

Dated this 25th day of April, 2013.


James E. Johnson
Attorney for Mark Lankford


Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

In addition, a copy of the foregoing document was sent to the Court Clerk in Idaho County, Grangeville, Idaho, with a request that it be conformed and then forwarded to Judge Judd 851 W. Front Street, Apt. 1202, Boise, ID 83702

On the 25th day of April, 2013


James E. Johnson

IDAHO COUNTY DISTRICT COURT
FILED
AT 12:52 O'CLOCK P.M.

MAY 09 2013

LAWRENCE G. WASDEN
Attorney General
State of IdahoPAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law DivisionL. LaMONT ANDERSON, ISB #3687
Deputy Attorney General
Chief, Criminal Law Division
Capital Litigation Unit
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-4539
Facsimile: (208) 854-8074
E-mail: lamont.anderson@ag.idaho.gov

DOCKETED

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

ORIGINAL

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

CASE NO. CR 1983-20158

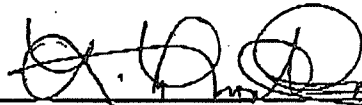
MOTION TO VACATE AND
CONTINUE EVIDENTIARY
HEARING

COMES NOW, L. LaMont Anderson, Deputy Attorney General, Chief, Capital Litigation Unit and Special Prosecuting Attorney for Idaho County, State of Idaho, and, on behalf of Respondent, State of Idaho ("state"), hereby moves this Court for an order continuing the evidentiary hearing currently scheduled to commence on July 8, 2013 at 9:00 a.m., Pacific Time, before the Honorable James F. Judd, in the District Courtroom of

MOTION TO VACATE AND CONTINUE EVIDENTIARY HEARING - 1

the Clearwater County Courthouse, Orofino, Idaho. This motion is based on the affidavit of the undersigned attorney, which is attached hereto and incorporated by reference herein.

DATED this 9th day of May, 2013.



L. LaMONT ANDERSON
Deputy Attorney General
Chief, Capital Litigation Unit
Special Prosecuting Attorney for Idaho County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on or about the 9th day of May, 2013, I caused to be serviced a true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, and addressed to the following:

James E. Johnson
Attorney for Mark Lankford
604 S. Washington Street, Suite 3
Moscow, ID 83843
Fax: (208) 882-1362

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☒ Facsimile
☐ Electronic Mail

Gary I. Amendola
Attorney for Bryan Lankford
70 North 4th Street
Coeur d'Alene, ID 83814
Fax: (208) 765-1046

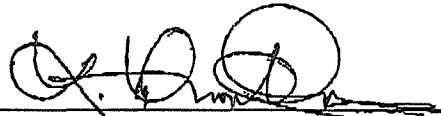
☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☒ Facsimile
☐ Electronic Mail

Ray Barker
Attorney for Lane Thomas
P.O. Box 9408
Moscow, ID 83843
Fax: (208) 882-7604

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☒ Facsimile
☐ Electronic Mail

Honorable James F. Judd
851 W. Front Street, Apt. 1202
Boise, ID 83702

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Electronic Mail


L. LaMONT ANDERSON
Deputy Attorney General
Chief, Capital Litigation Unit

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

L. LaMONT ANDERSON, ISB #3687
Deputy Attorney General
Chief, Criminal Law Division
Capital Litigation Unit
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-4539
Facsimile: (208) 854-8074
E-mail: lamont.anderson@ag.idaho.gov

Attorneys for Plaintiff

IDAHO COUNTY DISTRICT COURT
FILED
AT 4:49 O'CLOCK P.M.

MAY 13 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY
Kathy Ackerman

DOCKETED

ORIGINAL

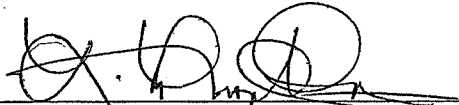
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,)	
	)	CASE NO. CR 1983-20158
Plaintiff,)	
)	
vs.	)	MOTION TO VACATE AND
	)	CONTINUE EVIDENTIARY
MARK HENRY LANKFORD,	)	HEARING
)	
Defendant.)	
)	

COMES NOW, L. LaMont Anderson, Deputy Attorney General, Chief, Capital Litigation Unit and Special Prosecuting Attorney for Idaho County, State of Idaho, and, on behalf of Respondent, State of Idaho ("state"), hereby moves this Court for an order continuing the evidentiary hearing currently scheduled to commence on July 8, 2013 at 9:00 a.m., Pacific Time, before the Honorable James F. Judd, in the District Courtroom of

the Clearwater County Courthouse, Orofino, Idaho. This motion is based on the affidavit of the undersigned attorney, which is attached hereto and incorporated by reference herein.

DATED this 9th day of May, 2013.

A handwritten signature in black ink, appearing to read 'L. LaMONT ANDERSON', is written over a horizontal line.

L. LaMONT ANDERSON
Deputy Attorney General
Chief, Capital Litigation Unit
Special Prosecuting Attorney for Idaho County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on or about the 9th day of May, 2013, I caused to be serviced a true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, and addressed to the following:

James E. Johnson
Attorney for Mark Lankford
604 S. Washington Street, Suite 3
Moscow, ID 83843
Fax: (208) 882-1362

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☒ Facsimile
☐ Electronic Mail

Gary I. Amendola
Attorney for Bryan Lankford
70 North 4th Street
Coeur d'Alene, ID 83814
Fax: (208) 765-1046


☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☒ Facsimile
☐ Electronic Mail

Ray Barker
Attorney for Lane Thomas
P.O. Box 9408
Moscow, ID 83843
Fax: (208) 882-7604

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☒ Facsimile
☐ Electronic Mail

Honorable James F. Judd
851 W. Front Street, Apt. 1202
Boise, ID 83702

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Electronic Mail



L. LaMONT ANDERSON
Deputy Attorney General
Chief, Capital Litigation Unit

MAY 16 2013

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567 0551
ISBN 6383

DOCKETED

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,)	CR 83-20158
)	
Plaintiff,)	
)	
V.	)	MOTION FOR
	)	FOURTH ORDER TO
MARK HENRY LANKFORD,	)	TRANSPORT PRISONER
Defendant.)	
_____)	

Comes now the Defendant, through his counsel James E. Johnson, and moves the Court for a Fourth Order to Transport Prisoner, pursuant to I.C. §19-3012. The Defendant seeks to have Bryan S. Lankford transported to the Clearwater County Court in Orofino, Idaho for an evidentiary hearing in Mark Lankford's Amended And Consolidated Second Motion for a New Trial. The hearing is currently scheduled for July 8-12, 2012.

This Motion is supported by the Fourth Affidavit of James E. Johnson, Re: Motion for Order to Transport Prisoner, which is attached.

Dated this 15th day of May, 2013.



James E. Johnson

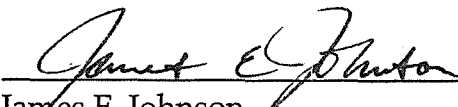
Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail to:

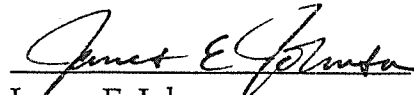
LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

Gary Amendola, attorney for Bryan Lankford
Amendola & Doty
702 N. Fourth Avenue
Coeur d'Alene, ID 83814
gary@aadlawoffice.com

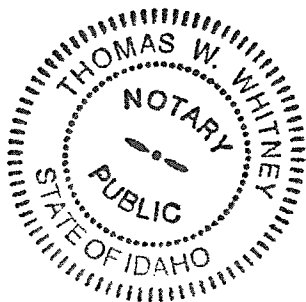
On the 15 day of May, 2013

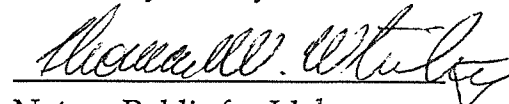

James E. Johnson

4. According to court records in this case, and in Idaho County case number CR-83-20157, and U.S. District Court for the District of Idaho case number 09-538-LMB, Bryan S. Lankford has told various versions of his knowledge about this case to various people.
5. Mr. Mark Lankford has claimed that Bryan S. Lankford perjured himself in his trial testimony.
6. Bryan S. Lankford is a necessary and material witness at the evidentiary hearing in this matter.
7. This ends this affidavit.


James E. Johnson

SUBSCRIBED AND SWORN to before me this 15 day of May, 2013.




Notary Public for Idaho
Residing at Moreau, Idaho
My commission expires 06-11-2016

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567 0551
ISBN 6383

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 9:36 O'CLOCK A.M.

MAY 16 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
Kathy M. Ackerman

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,)	CR 83-20158
)	
Plaintiff,)	
)	
V.	)	MOTION FOR ORDER
	)	TO CLOSE PORTION
MARK HENRY LANKFORD,	)	OF EVIDENTIARY HEARING
Defendant.)	
_____)	

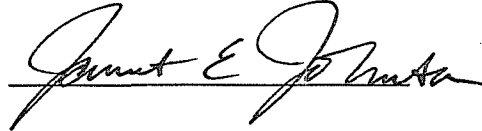
Comes now the Defendant, through his counsel James E. Johnson, and moves the Court for an order to close a portion of the evidentiary hearing which is currently set for July 8-12, 2013.

This motion is brought in recognition of the Order Following In Camera Review, issued on March 8, 2013. The Defendant is entitled to a speedy and public trial (I.C. 19-106), which would imply that in the general case all the proceedings should be public. That is in conflict with the protections described by the Idaho State Bar in seeking to quash the Subpoenaed Materials. (I.B.C.R. 52). The Defendant's position is that the Subpoenaed Materials are extremely important and relevant to his case.

As a reasonable compromise, the Defendant moves the court to close whatever portion of the evidentiary hearing in which the subpoenaed materials may be offered as evidence, discussed or argued.

The Defendant proposes that this motion be discussed at the status conference currently scheduled for May 20, 2013.

Dated this 15th day of May, 2013.



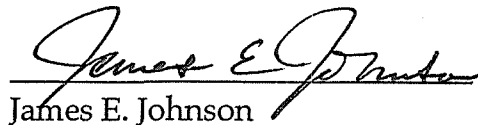
James E. Johnson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

On the 15th day of May, 2013



AT 12:07 FILED P O'CLOCK 9 M.

MAY 20 2013

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 567-0551
ISB #6383

DOCKETED

KATHY M. LOCKERMAN
CLERK OF DISTRICT COURT
Kathy Lockerman
SECURITY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,
Plaintiff,

Case No. CR-83-20158

ORDER FOR PAYMENT FOR LEGAL SERVICES

v.
MARK LANKFORD,
Defendant.

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, James E. Johnson, (for the month of April, 2013) hereby approves the same and orders payment of Two Thousand Five Hundred and Fifty-Seven Dollars and Sixty Cents (\$2,557.60).

DATED this 20th day of May, 2013.

James Judd
District Judge

ORDER-FOR PAYMENT FOR LEGAL SERVICES

ORIGINAL

COURT MINUTES

CR-1983-0020158
State of Idaho vs. Mark Henry Lankford
Hearing type: Motion
Hearing date: 5/20/2013
Time: 10:30 am
Judge: James F Judd
Courtroom: District
Court reporter: Keith Evans
Minutes Clerk: KATHYJ
Tape Number: District
Defense Attorney: James Johnson
Prosecutor: Attorney General

10:32 Court announces case
All parties appear telephonically

10:32 Court addresses Anderson
Johnson responds to the court re: objection to continuance of hearing

10:33 Court responds
Johnson argues in opposition to motion for continuance
Johnson argues in support of mediation

10:34 Anderson responds and states that attempt at mediation was already tried unsuccessfully

10:35 Court addresses counsel and states that continuance could be moved to August 5th in Orofino

10:36 Johnson responds to the court
Anderson states witness is not available that week

10:37 Court questions counsel re: length of hearing
Anderson responds to the court

10:38 Johnson responds to the court re: timing of case

10:39 Court addresses counsel re: Aug 5th date
Anderson responds to the court

10:41 Johnson responds to the court
Court addresses counsel

10:42 Anderson responds to the court

Johnson responds to the court

Court responds, vacate current hearing, reset to August 5th

10:43 Counsel concurs with court

Court will set for August 5th with all witnesses that are available, set for another date with other counsel that are available

10:44 Johnson responds

10:45 Court responds, get as many witnesses in as possible on the Aug 5th week, get others later

Johnson addresses the court

Court responds to the Johnson

10:46 Johnson discusses with the court

10:47 Anderson interjects and addresses court and counsel

10:48 Court questions counsel

Counsel respond and discuss possibilities of dates and witnesses the court

10:50 Counsel discuss witness and evidence with the court

10:51 Court addresses counsel re: date

Anderson responds re: testimony of Albers

10:52 Johnson concurs

10:52 Court sets primary hearing for week of August 5

Court states we will pick date prior to that date to hear Albers and any prehearing motions

10:54 Anderson responds to the court re: available dates for Albers

Court questions Anderson

10:55 Court looks to July 29 for date for Albers

Counsel respond

10:56 Court sets July 29 for location to be determined – Orofino or Grangeville

Complete hearing on August 5 in Orofino

10:57 Court addresses counsel

Court questions counsel re: time lines re: exhibit lists

Anderson responds to the court, counsel can put together scheduling order

Johnson concurs

10:58 Johnson addresses court re: service to counsel for witnesses

10:59 Court responds, counsel that are representing witnesses not parties, make sure counsel is available for August 5th and transport orders

11:00 Johnson addresses court re: motion filed under seal and would like to have motion unsealed

11:01 Court responds to Johnson
Johnson responds re: motion filed under seal

11:03 Anderson has no objection to motion itself being unsealed but the exhibits attached should remain sealed

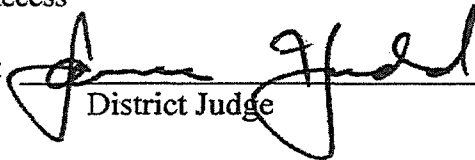
11:03 Court addresses Johnson
Johnson replies
Court responds, Johnson to send order to the court re: unsealing motion

11:04 Johnson responds

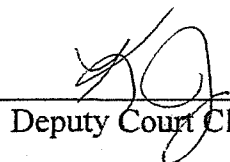
11:05 Court addresses Johnson re: counsel for witness are present

11:05 Recess

Signed:


District Judge

Signed:


Deputy Court Clerk

IDAHO COUNTY DISTRICT COURT
FILED
AT 12:46 O'CLOCK P.M.

MAY 21 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,
Plaintiff,

v.

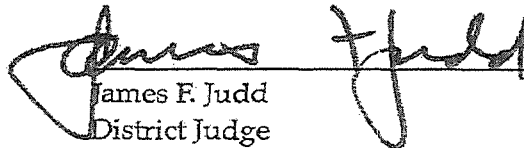
MARK HENRY LANKFORD,
Defendant.

CR 83-20158

ORDER UNSEALING AMENDED
AND CONSOLIDATED SECOND
MOTION FOR A NEW TRIAL,
EXCEPTING TWO EXHIBITS

Upon motion of the Defendant, without objection from the State, it is hereby
ordered that the Defendant's Amended and Consolidated Second Motion For A New
Trial, which was filed April 26, 2013, is to be UNSEALED, with the exception that two
attached exhibits (labeled Exhibit U and Exhibit V by the Defendant) MUST
REMAINED SEALED, until further order of this Court.

Dated this 31st day of May, 2013.


James F. Judd
District Judge

ORDER UNSEALING AMENDED AND CONSOLIDATED SECOND MOTION FOR NEW TRIAL,
EXCEPTING TWO EXHIBITS

1

ORIGINAL

Clerk's Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

Jay Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843

On the 21st day of May, 2013.

KATHY M. ACKERMAN, Clerk
Kathy Johnson
Deputy Clerk

IDAHO COUNTY DISTRICT COURT
FILED
AT 3:47 O'CLOCK P.M.

MAY 22 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567 0551
ISBN 6383

DOCKETED
DOCKETED

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
)	
Plaintiff,)	
)	
V.	)	ORDER TO TRANSPORT
	)	PRISONER
MARK HENRY LANKFORD,	)	(MARK LANKFORD)
Defendant.)	
)	

To: Sheriff's Office, Clearwater County
150 Michigan Avenue
Orofino, Idaho

Mark Henry Lankford is currently incarcerated at the Idaho Correctional
Institution -- Orofino, in Orofino, Idaho. An evidentiary hearing is scheduled for Mark
Henry Lankford's Amended And Consolidated Second Motion For A New Trial for July
29, 2013 and from August 5 - 9, 2013, to be heard at the Clearwater County Courthouse
in Orofino, Idaho.

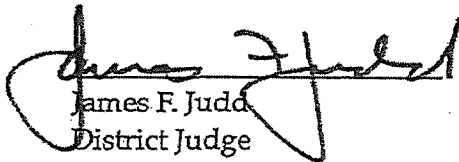
ORDER TO TRANSPORT PRISONER (MARK LANKFORD)

ORIGINAL

It is hereby ordered that the Clearwater County Sheriff's Office transport Mark Lankford, IDOC number 20489, from ICI- Orofino to the Clearwater County Courthouse, Orofino, Idaho for a evidentiary hearing in this case on July 29, 2013 and from August 5 - 9, 2013, beginning at 9:00 AM.

It is further ordered that Idaho County Sheriff's Office return Mark Henry Lankford to ICI- Orofino upon completion of his participation in the hearing, if so ordered by the Court at that time.

Dated this 22nd day of May, 2013. .


James F. Judd
District Judge

Clerk's Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. mail to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

Jay Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
fax: 208 567 0551

ORDER TO TRANSPORT PRISONER (MARK LANKFORD)

Central Records
Idaho State Board of Correction
centralrecords@idoc.idaho.gov

fax # 327.7445

Sheriff's Office, Clearwater County
150 Michigan Avenue
Orofino, ID 83544

On the 2nd day of May, 2013

KATHY M. ACKERMAN, Clerk

Kathy Johnson
Deputy Clerk

DOCKETED

MAY 22 2013

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567 0551
ISBN 6383

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
Kathy M. Ackerman

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
)	
Plaintiff,)	
)	
V.	)	AMENDED
	)	FOURTH ORDER TO
	)	TRANSPORT PRISONER
MARK HENRY LANKFORD,)	
Defendant.)	
)	

To:

Idaho County Sheriff's Office
320 W. Main Street
Grangeville, ID 83530

Bryan Stuart Lankford is currently incarcerated at the Idaho Maximum Security Institution in Kuna, Idaho. Mark Lankford has filed a motion supported by an affidavit seeking that Bryan Stuart Lankford be transported to Clearwater County Courthouse in Orofino, Idaho in order to give testimony at an evidentiary hearing.

It is hereby ordered that the Sheriff's Office of Idaho County, Idaho transport Bryan Stuart Lankford, IDOC number 20488, from the Idaho Maximum Security

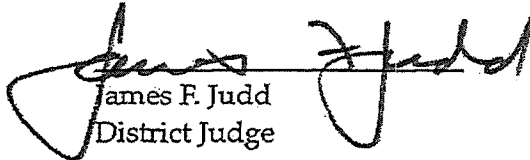
AMENDED FOURTH ORDER TO TRANSPORT PRISONER

ORIGINAL 1

Institution in Kuna, Ida, to the Clearwater County Courthouse, Orofino, Idaho for a evidentiary hearing in this case from August 5 -9, 2013, beginning at 9:00 AM.

It is further ordered that Idaho County Sheriff's Office return Bryan Stuart Langford to the Idaho Maximum Security Institution in Kuna, Idaho upon completion of his participation in the hearing, if so ordered by the Court at that time..

Dated this 22nd day of May, 2013.


James F. Judd
District Judge

Clerk's Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. mail to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

Gary Amendola, attorney for Bryan Lankford
Amendola & Doty
702 N. Fourth Avenue
Coeur d'Alene, ID 83814
gary@aadlawoffice.com

Jay Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
fax: 208 567 0551

Central Records
Idaho State Board of Correction
centralrecords@idoc.idaho.gov

fax # 327.7445

and faxed to:

Idaho County Sheriff's Office

attn: Jail

320 W. Main Street

Grangeville, ID 83530

fax: 208 983 1359

- delivered to tray

On the 22nd day of May, 2013

KATHY M. ACKERMAN, Clerk

Kathy Johnson
Deputy Clerk

IDAHO COUNTY DISTRICT COURT
FILED
AT 4:30 P.M. O'CLOCK

JUN - 6 2013

DOCKETED

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY
Kathy M. Ackerman

D. RAY BARKER
Attorney at Law
204 East First Street
P.O. Box 9408
Moscow, Idaho 83843-0118
(208) 882-6749
Idaho State Bar No. 1380

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	Case No. CR-1983-20158
)	
Plaintiff,)	
)	
vs.	)	ORDER
)	
MARK LANKFORD,)	
)	
<u>Defendant.</u>)	

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, D. Ray Barker, hereby approves the same and orders payment of Seventeen Dollars and Fifty Cents (\$17.50).

DATED this 6 day of June, 2013.

James F. Fiedel
District Judge

DOCKETED

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
ST. LOUIS, MISSOURI

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 2:00 O'CLOCK P.M.

JUN 26 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567-0551
email: jay.dr.juris@gmail.com
ISBN 6383

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
)	
Plaintiff,)	
)	
V.	)	MOTION FOR APPROVAL
	)	OF PAYMENT FOR
	)	TRANSCRIPTS, AT
MARK HENRY LANKFORD,	)	COUNTY EXPENSE
Defendant.)	
_____)	

James E. Johnson, court-appointed attorney for Mr. Mark Lankford, moves the Court approving of payment for preparation of two transcripts, as outlined in the attached affidavit.

The transcripts were prepared by Ms. Sheryl Engler, a court reporter in the Second Judicial District. The transcripts were prepared for use as evidence in the hearing currently set for August 5, 2013. The two transcripts are 1) the February 29, 2008 court hearing in Latah County case number CR-2007-03656, State v. Lane Thomas,

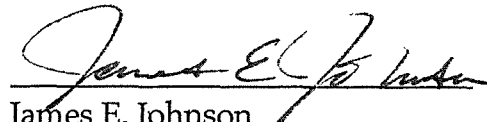
ORIGINAL

8110

a Review of Retained Jurisdiction during which the disposition of Mr. Thomas's sentence was changed; and 2) a recorded interview of Sam York by Charles Schoonover conducted on January 9, 2008.

The cost of preparation by Ms. Engler is \$133.25. Her invoice is attached. An affidavit in support of this motion is also attached.

Dated this 25th day of June, 2013.


James E. Johnson
attorney for Mark Lankford

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

In addition, a copy of the foregoing document was sent to the Court Clerk in Idaho County, Grangeville, Idaho, with a request that it be conformed and then forwarded to Judge Judd 851 W. Front Street, Apt. 1202, Boise, ID 83702

On the 25th day of June, 2013


James E. Johnson

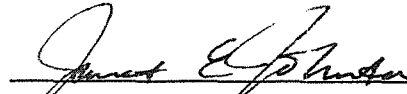
Attorney for Mr. Mark Lankford

STATE OF IDAHO,) CR 83-20158
)
)
Plaintiff,) AFFIDAVIT OF
) JAMES E. JOHNSON, RE:
V.) MOTION FOR
) APPROVAL OF PAYMENT
MARK HENRY LANKFORD,) FOR TRANSCRIPTS, AT COUNTY
Defendant.) EXPENSE
)

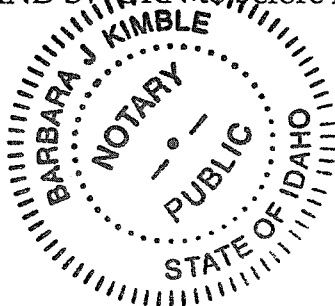
—

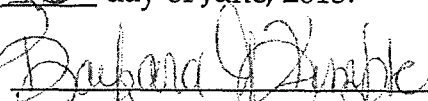
ORIGINAL

4. Much of the anticipated evidence is expected to address payment and other consideration to Lane Thomas, a witness on behalf of the State in the February 2008 trial, State v. Mark Lankford.
5. Mark Lankford has had transcripts be prepared of two events: the Rider Review hearing held February 29, 2008 in State v. Thomas, Latah county case number CR-2007-03556; and an interview of Sam York by Charles Schoonover conducted January 9, 2008.
6. Both events are relevant to this case in that they show motivation for Thomas's testimony at trial in this case in February, 2008.
7. The transcripts will assist the Defense, the State, and the Court understand and prepare for the evidentiary hearing in this matter.
8. The total amount for the transcripts is \$133.25.
9. The preparation of the transcripts by a certified court reporter should eliminate questions about the authenticity and completeness of the transcripts.
10. This ends this affidavit.


James E. Johnson

SUBSCRIBED AND SWORN to before me this 25th day of June, 2013.




Notary Public for Idaho

Residing at Idaho

My commission expires 5/31/2014

SHERYL L. ENGLER
Certified Shorthand Reporter
P.O. BOX 8606
Moscow, Idaho 83843
(208)883-2255 ex: 3362

DATE: 06/25/13

TO:

Jay Johnson
_ % _
Moscow, Idaho 83843

INVOICE INFORMATION

In re: State of Idaho v. Lane Franklin Thomas
Latah County No. CR-2007-3656

MOTION TO RECONSIDER SENTENCE - February 29, 2008 - 16 pages

INTERVIEW OF SAMUEL CHRISTOPHER YORK BY CHARLES
SCHOONOVER –
January 9 – 25 pages

16 pages: Original and one copy of the
above-named hearing \$ 52.00

25 pages: Original and one copy of the
Above-named Interview \$ 81.25

TOTAL: \$133.25

Thanks!
Idaho CSR No. SLR761

IDAHO COUNTY DISTRICT COURT
FILED
AT 10:26 O'CLOCK A.M.

JUN 27 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

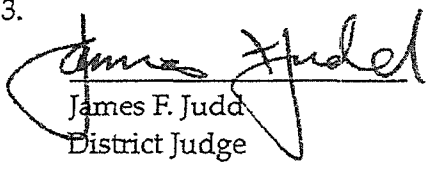
DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

THE STATE OF IDAHO,)	
	)	Case No. CR-83-20158
Plaintiff,)	
vs.	)	ORDER FOR PAYMENT
	)	FOR TRANSCRIPT
MARK HENRY LANKFORD,)	
)	
Defendant.)	
_____)	

The Defendant has submitted an invoice for the services of Sheryl Engler, C.S.R.
The claimed expenses are reasonable. It is hereby ordered that Idaho County pay
Sheryl Engler \$133.25 for her services, as described on her invoice dated June 25, 2013.

Dated this 27 day of June, 2013.


James F. Judd
District Judge

ORDER FOR PAYMENT FOR TRANSCRIPT

ORIGINAL 1

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the ORDER FOR PAYMENT FOR TRANSCRIPT were served on the following in the manner indicated below:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

☒ U.S. mail
☐ PDF email
☐ fax 208 983 3919
☐ hand delivery

Jay Johnson
Attorney at Law
604 S. Washington, ste 3
Moscow, Idaho 83843

☒ U.S. mail
☐ PDF email
☐ fax 208 567 0551
☐ hand delivery

Kathy Ackerman, County Clerk
C/O Kathy Johnson, deputy clerk
Idaho County Courthouse
320 W Main Street
Grangeville, Idaho 83530

☐ U.S. Mail
☐ fax 208 983 2376
☐ PDF email
☒ hand delivery

dated this 27th day of June, 2013

KATHY M. ACKERMAN, Clerk
Kathy Johnson
Deputy Clerk

AT 9:34 FILED O'CLOCK A.M.

JUL - 8 2013

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 567-0551
ISB #6383

DOCKETED

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
~~Kathy Johnson~~ DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,
Plaintiff,

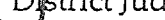
Case No. CR-83-20158

ORDER FOR PAYMENT FOR LEGAL SERVICES

v.
MARK LANKFORD,
Defendant.

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, James E. Johnson, (for the month of June, 2013) hereby approves the same and orders payment of One Thousand Six Hundred and Ninety Dollars and Ten Cents (\$1,690.10).

DATED this 6th day of July, 2013.


James Judd
District Judge

ORIGINAL

ORDER-FOR PAYMENT FOR LEGAL SERVICES

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567 0551
ISBN 6383

Attorney for Mr. Mark Lankford

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 10:00 A.M.

JUL - 3 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
)	
Plaintiff,)	
)	
V.	)	MOTION FOR ORDER
	)	ALLOWING TESTIMONY
MARK HENRY LANKFORD,	)	BY TELEPHONE OR SKYPE
Defendant.)	
_____)	

Comes now the Defendant, through his counsel James E. Johnson, and moves the Court for an order allowing two witnesses to testify by telephone or in the alternative, the video function of Skype.

The first request concerns William Thompson, the elected prosecutor of Latah County. The Defendant has subpoenaed Mr. Thompson primarily for two reasons: 1) to help establish foundation for the emails shown in the proposed exhibit II, emails between Mr. Thompson, Mr. MacGregor, and Ms. Squire-Leonard; and, 2) regarding any knowledge of the \$1500 payment prior to the Rider Review hearing in State v. Lane Thomas, Latah County case number CR-07-3656, on February 29, 2008.

Mr. Thompson is currently subpoenaed to appear on July 29, 2013, because he had a schedule conflict for the first week of August. Unfortunately he is currently scheduled to be participating in a preliminary hearing in a Latah County murder case on July 30, and has requested that he be able to testify by telephone, because of the time

he will necessarily lose in traveling back and forth from Orofino. Defense Counsel is familiar with Mr. Thompson's voice and will be able to confirm that the speaker is indeed Mr. Thompson. It is understanding of the undersigned that Mr. Anderson has had telephone conversations with Mr. Thompson also.

The second request concerns Lee John Lankford. Defense counsel seeks to have Mr. Lankford testify about his receipt of Idaho County funds in return for what was presented as lost wages, for his testimony in July 2008.

Mr. Lee John Lankford's testimony will be helpful in presenting the Defendant's position that the Idaho County Prosecutor's Office improperly paid for testimony by witnesses in Mark Lankford's 2008 trial and sentencing. Although the record of such payment can be presented through Idaho County employees, only Lee John Lankford can give his version of what negotiation occurred prior to his testimony.

However, Mr. Lankford resides in Texas, and the transportation, housing and meal expense will be considerable, in addition to the lost wages he would incur by traveling. He is resistant to traveling to testify. If he were allowed to testify by either telephone or the video alternative of Skype, it would be cost-efficient and the same net result achieved.

Although not directly applicable because it refers to procedure in civil cases, I.R.C.P. 7(b)(4) allows for conducting hearings by telephone or video. Allowing testimony in two special circumstances would make sense for this evidentiary hearing. Furthermore, video testimony is allowable for forensic testimony. I.C.R. 43.3. Although this requested testimony is not forensic in the textual meaning of I.C.R. 43.3, it would make sense to allow this testimony from a remote location given the circumstances.

Oral argument is requested.

Dated this 2nd day of July, 2013.


James E. Johnson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

On the 2nd day of July, 2013


James E. Johnson

COURT MINUTES

CR-1983-0020158

State of Idaho vs. Mark Henry Lankford

Hearing type: Motion

Hearing date: 7/17/2013

Time: 9:58 am

Judge: James F Judd

Courtroom: District

Court reporter: Keith Evans

Minutes Clerk: KATHYJ

Tape Number: District

Defense Attorney: James Johnson

Prosecutor: Attorney General

10:04 Court addresses counsel

Court announces case

Defendant not present but represented by counsel

10:04 Johnson addresses the court re: motion to close hearing

10:06 Anderson responds to the court

10:06 Court responds, hearing should not be closed

10:07 Johnson responds and verbally moves to withdraw motion for closed hearing, court considers motion withdrawn. Johnson to follow up with written request

10:08 Court questions Johnson

Johnson responds re: testimony by telephone

10:09 Anderson responds

10:10 Court responds, no testimony by skipe, but can appear by phone

Johnson responds

Court instructs Johnson on preparation of an order

10:12 Johnson addresses the court

Johnson requests transport order for witness

Court questions Anderson

Anderson responds

10:14 Johnson addresses the court

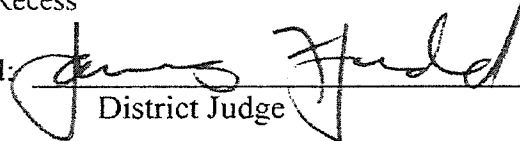
10:15 Court responds

10:15 Johnson addresses the court further
Court questions counsel re: other witnesses
Johnson responds

10:17 Counsel have nothing further
Court addresses counsel

10:17 Recess

Signed:


District Judge

Signed:


Deputy Court Clerk

DOCKETED

IDAHO COUNTY DISTRICT COURT
AT 3:02 FILED O'CLOCK P.M.

JUL 17, 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
)	
Plaintiff,)	
)	
V.	)	SECOND ORDER TO
	)	TRANSPORT PRISONER,
MARK HENRY LANKFORD,	)	JOSEPHINE GUERNSEY
Defendant.)	
)	

To:

Idaho County Sheriff's Office
320 W. Main Street
Grangeville, ID 83530

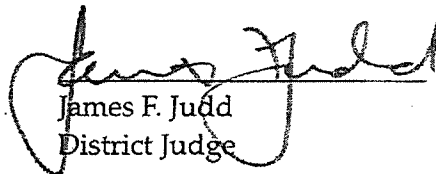
Josephine L. Guernsey is currently incarcerated at the Nez Perce County Jail in Lewiston, Idaho. Mark Lankford has filed a motion supported by an statement of his attorney seeking that Josephine L Guernsey be transported to Clearwater County Courthouse in Orofino, Idaho in order to give testimony at an evidentiary hearing.

It is hereby ordered that the Sheriff's Office of Idaho County, Idaho transport Josephine L. Guernsey, IDOC number 103038, from the Nez Perce County Jail, to the

Clearwater County Courthouse, Michigan Avenue, Orofino, Idaho for a evidentiary hearing in this case to be held on July 29, 2013.

It is further ordered that Idaho County Sheriff's Office return Josephine L. Guernsey to the Nez Perce County Jail, Lewiston, Idaho upon completion of her participation in the hearing.

Dated this 17th day of July, 2013.


James F. Judd
District Judge

Clerk's Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was emailed a PDF copy to:

✓ LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

✓ Joanna McFarland, attorney for Ms. Guernsey
1618 Idaho Street, suite 103
Lewiston, Idaho 83501
joannamcfarland@hotmail.com

Jay Johnson
604 S. Washington Street, suite 3

Moscow, ID 83843
jay.dr.juris@gmail.com

Central Records
Idaho State Board of Correction
centralrecords@idoc.idaho.gov

and faxed to:
Idaho County Sheriff's Office
attn: Jail
320 W. Main Street
Grangeville, ID 83530
fax: 208 983 1359

On the 17th day of July, 2013

KATHY M. ACKERMAN, Clerk

Kathy Johnson
Deputy Clerk

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 5670551
ISBN 6383

IDAHO COUNTY DISTRICT COURT
FILED
AT 10:15 O'CLOCK A.M.

JUL 18 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
Kathy M. Ackerman
DEPUTY

DOCKETED

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
)	
Plaintiff,)	
)	
v.	)	MOTION FOR
	)	SECOND ORDER TO
	)	TRANSPORT PRISONER,
MARK HENRY LANKFORD,	)	JOSEPHINE GUERNSEY
Defendant.)	
_____)	

Comes now the Defendant, through his counsel James E. Johnson, and moves the Court for a second Order to Transport Prisoner, pursuant to I.C. §19-3012. The Defendant seeks to have Josephine Guernsey transported to the Clearwater County Courthouse in Orofino for an evidentiary hearing in Mark Lankford's Amended and Consolidated Second Motion For A New Trial, on July 29, 2013. The hearing is currently scheduled for July 29, 2013 and August 5-9, 2013.

This Motion is supported by the Statement of James E. Johnson, Re: Motion for Second Order to Transport Prisoner, Josephine Guernsey, which is attached.

Dated this 17th day of July, 2013.

James E. Johnson
James E. Johnson

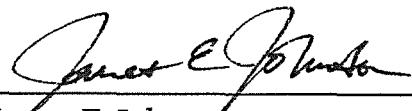
Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. mail and PDF email to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

The Honorable James F. Judd
851 W. Front Street, Apt. 1202
Boise, ID 83702-5860
judgejudd@gmail.com

On the 17th day of July, 2013



James E. Johnson

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 5670551
ISBN 6383

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,)	CR 83-20158
)	
Plaintiff,	)	STATEMENT OF
	)	JAMES E. JOHNSON, RE:
V.	)	MOTION FOR SECOND ORDER
	)	TO TRANSPORT PRISONER,
MARK HENRY LANKFORD,	)	JOSEPHINE GUERNSEY
Defendant.)	
_____)	

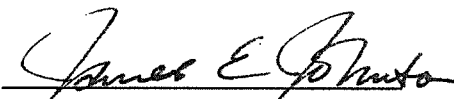
I, James E. Johnson, do hereby state the following information is true and correct to the best of my knowledge and belief:

1. I am the court-appointed attorney for Mark Henry Lankford.
2. I am seeking the court's order requiring Idaho County Sheriff's Office to transport Josephine Guernsey to appear at the evidentiary hearing scheduled for July 29, 2013, in Orofino, Idaho. According to her attorney, Josephine Guernsey is currently an inmate at the Nez Perce County Jail in Lewiston, Idaho.
3. Josephine Guernsey executed an affidavit on January 26, 2012, which contradicts the trial testimony of Lane Thomas given at the 2008 trial in this case. The undersigned gave notice of filing this affidavit to the court in March of 2012.
4. In my opinion, the trial testimony of Lane Thomas was very important evidence against Mark Lankford.

5. Ms. Guernsey is expected to testify consistently with her affidavit. However, her affidavit alone might be objected to as hearsay.
6. Any evidence which shows that Lane Thomas was lying in his trial testimony is important to the Defendant's case.
7. Josephine Guernsey is a necessary and material witness at the evidentiary hearing in this matter.
8. Ms. Guernsey was served with a subpoena in this case in preparation for the July 29 and August 5-9, 2013. Her current subpoena required her to appear on August 5-9, 2013; that subpoena was prepared with the expectation that Ms. Guernsey would be available on those dates.
9. It is possible that Ms. Guernsey may be unavailable for the August 5-9 hearing dates, due to possible transport to an IDOC facility.
10. This ends this statement.

I hereby declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Dated this 17th day of July, 2013.


James E. Johnson

Description	State of Idaho v. Mark Lankford CR 1983-20158 Presiding Judge: James F. Judd Prosecutor: Lamont Anderson Defendant: James E. Johnson Court Reporter: none Clerk: Kathy Johnson Being recorded in Clearwater County
--------------------	---

Date	7/29/2013	Location	COURTROOM2
-------------	-----------	-----------------	------------

Time	Speaker	Note
9:21:08 AM		Court announces case Defendant presnt with counsel Court addresses no court reporter issue
9:21:49 AM		Johnson addresses court re: Lane Thomas telephonically Lankford has signed on stipulation, and presents court with order
9:23:01 AM		Court signs order
9:23:14 AM		Anderson addresses court and moves to exclude witness
9:23:39 AM		Dennis Albers given oath and testifies
9:23:51 AM		Johnson direct examination
9:24:56 AM		Johnson marks Ex #A and presents to witness
9:25:57 AM		Johnson moves to admit Ex #A
9:26:25 AM		Anderson objects
9:26:30 AM		Johnson responds and argues further
9:26:43 AM		Court questions Johnson re: admission
9:26:56 AM		Anderson argues further in aid of objection
9:27:16 AM		Court will allow Johnson to confirm before admission
9:27:46 AM		Johnson marks Ex #B
9:29:23 AM		Johnson marks Ex #C
9:32:00 AM		Johnson moves to admit Ex #C Anderson objects
9:32:25 AM		Court questions Anderson
9:33:15 AM		Johnson replies to objection
9:33:28 AM		Court questions Johnson
9:33:41 AM		Johnson replies
9:35:05 AM		Court questions Johnson
9:36:08 AM		Johnson argues further in response to the court
9:36:48 AM		Anderson argues further in aid of objection
9:38:13 AM		Johnson argues in response
9:38:51 AM		Court addresses Johnson re: exhibit
9:40:14 AM		Court denies admission of Exhibit C
9:42:01 AM		Johnson marks Ex #E
9:44:14 AM		Anderson objects
9:44:23 AM		Court responds and denies admission of exhibit #E
9:45:36 AM		Johnson marks Ex #F
9:47:57 AM		Johnson marks Ex #G
9:52:22 AM		Johnson marks Ex #H
9:54:15 AM		Anderson objects
9:54:41 AM		Johnson defers

Time	Speaker	Note
9:56:25 AM		Anderson objects
9:56:32 AM		Johnson withdraws question
10:00:21 AM		Anderson objects
10:00:33 AM		Johnson addresses the court in response
10:00:46 AM		Court addresses Johnson - objection overruled
10:02:17 AM		Anderson objects
10:03:15 AM		Johnson responds to the court
10:03:47 AM		Court questions Johnson
10:03:57 AM		Johnson responds
10:04:13 AM		Court responds to Johnson
10:05:36 AM		Court sustains objection
10:06:31 AM		Anderson objects
10:07:07 AM		Court addresses Johnson
10:07:13 AM		Johnson withdraws question
10:13:56 AM		Court questions witness
10:25:45 AM		Johnson takes a break
10:25:54 AM		Johnson continues questioning of witness
10:28:14 AM		Anderson objects
10:28:21 AM		Johnson responds
10:28:27 AM		Court overrules objection
10:31:00 AM		Anderson objects - overruled
10:37:16 AM		Anderson objects - sustained
10:47:44 AM		Anderson cross examination
10:55:39 AM		Recess
11:04:47 AM		Reconvened - all parties present
11:04:55 AM		witness admonished and excused
11:05:10 AM		Court addresses counsel re: stipulation to telephonic witness
11:07:44 AM		William Thompson given oath telephonically and testifies
11:07:54 AM		Johnson direct examination
11:08:36 AM		Johnson marks Ex #11 and OO
11:26:25 AM		Anderson cross examination
11:38:01 AM		Johnson objects - question withdrawn
11:40:12 AM		Johnson redirect examination
11:46:48 AM		Anderson recross examination
11:49:47 AM		witness excused
11:50:05 AM		Court addresses counsel
11:50:29 AM		Anderson addresses the court
11:50:55 AM		Anderson moves for court to take judicial notice of transcripts from retrial, Johnson offers no objection
11:51:27 AM		Court responds and addresses counsel

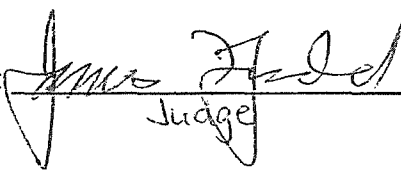
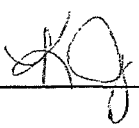
Time	Speaker	Note
11:52:06 AM		Anderson addresses court in response
11:52:24 AM		Court addresses Anderson and discusses with him re: volume of transcripts from retrial
11:53:08 AM		Court addresses counsel re: exhibits
11:53:51 AM		Recess
1:20:03 PM		Reconvened - all parties present
1:20:10 PM		Court announces case
1:20:22 PM		Josephine Guernsey given oath and testifies
1:20:53 PM		Johnson direct examination
1:26:13 PM		Johnson marks Ex #J and moves to admit
1:27:28 PM		Anderson objects - sustained
1:28:13 PM		Anderson cross examination
1:29:25 PM		Johnson redirect examination
1:30:41 PM		witness excused
1:30:56 PM		Court discusses with counsel re: any further issues before next week's hearings
1:31:33 PM		Johnson addresses the court re: testimony of Lane Thomas
1:33:01 PM		Court responds
1:33:15 PM		Anderson addresses the court in response
1:33:45 PM		Johnson responds
1:34:15 PM		Court questions counsel re: timing of hearing
1:36:57 PM		Johnson reviews witness list with the court
1:37:20 PM		Court responds to Johnson
1:37:37 PM		Anderson address the court in response
1:37:51 PM		Court requires consolidated exhibit list from counsel
1:38:20 PM		Recess
1:38:24 PM		
		Signed:  Judge
		Clerk: 

EXHIBIT LIST

Case No. CR 83-20158Date: July 29, 2013State of Idaho
PlaintiffSamont Anderson
Attorney

vs.

Mark N. Hankford
DefendantJay Johnson
Attorney ExhibitsMotion Hearing

No.	Description	Not Offered	Admitted	Denied	With- drawn	Original Sub.
A	Newspaper Article					
B	Letter from B. Hankford					
C	transcript			✓		
E	Letter from B. Hankford			✓		
F	" " "	✓				
G	Petition for writ B. Hankford					
H	Emails					
I	transcript					
J	Affidavit of J. Guernsey			✓		

on hold

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 3:53 O'CLOCK P.M.

JUL 29 2013

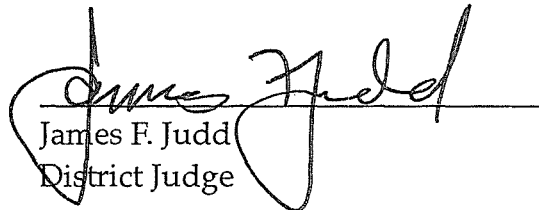
KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
)	
Plaintiff,	)	ORDER, RE: TESTIMONY
	)	OF WILLIAM THOMPSON
V.	)	BY TELEPHONE
)	
MARK HENRY LANKFORD,)	
Defendant.)	
_____)	

On stipulation of the parties, and good cause appearing, and the Defendant having waived his right to have this witness present when testifying, it is hereby ordered that Mr. William Thompson may testify by telephone at the evidentiary hearing scheduled for July 29, 2013 in this matter.

Dated this 29 day of July, 2013.


James F. Judd
District Judge

Clerk's Certificate of Service

I hereby certify that a true and correct copy of the foregoing Order, Re: Testimony Of William Thompson By Telephone was emailed a PDF copy to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

Jay Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
jay.dr.juris@gmail.com

On the 30th day of July, 2013

KATHY M. ACKERMAN, Clerk

Kathy Johnson
Deputy Clerk

Description	State v. Mark H. Lankford CR 83-20158 Presiding Judge: James F. Judd Clerk: KathyJ Location: Orofino Court room#1 Court Reporter: Nancy Towler Date: August 5, 2013 Prosecutor: Lamont Anderson Defense: James Johnson		
Date	8/5/2013 <table border="1" data-bbox="643 562 1427 613"> <tr> <td data-bbox="643 562 786 613">Location</td><td data-bbox="786 562 1427 613">COURTROOM1</td></tr> </table>	Location	COURTROOM1
Location	COURTROOM1		

Time	Speaker	Note
09:03:52 AM		Court announces case defendant present with counsel
09:04:18 AM		witnesses excluded
09:04:33 AM		Kathy Ackerman given oath and testifies Johnson direct examination
09:10:30 AM		Johnson marks Ex #Y and moves to admit
09:11:04 AM		Ex #Y admitted
09:11:58 AM		Johnson marks ex #CC
09:12:06 AM		Anderson questions witness in aid of objection
09:13:05 AM		Johnson withdraws questions
09:13:14 AM		Johnson marks Ex #AA
09:13:56 AM		Johnson moves to admit #AA - admitted
09:19:05 AM		Johnson marks Ex #X
09:19:20 AM		Johnson moves to admit Ex #X - admitted
09:20:31 AM		Johnson marks Ex #BB
09:21:03 AM		Johnson moves to admit Ex #BB
09:21:26 AM		Ex#BB admitted
09:23:57 AM		Johnson marks Ex #EE
09:24:27 AM		Johnson moves to admit EX #EE - admitted
09:25:38 AM		Johnson marks and moves to admit Ex #Z
09:25:50 AM		Ex #Z - admitted
09:32:27 AM		Anderson objects
09:32:33 AM		Johnson responds to the court
09:33:10 AM		Court questions Johnson in response to objection
09:33:58 AM		Johnson rephrases question
09:34:18 AM		Anderson objects
09:34:45 AM		Johnson replies to objection
09:35:07 AM		Court questions Johnson re: objection
09:35:57 AM		Court sustains objection
09:36:05 AM		Johnson argues further with the court re: objection
09:39:47 AM		Anderson addresses court
09:39:53 AM		Johnson responds
09:43:03 AM		Anderson objects
09:43:08 AM		Johnson responds
09:43:54 AM		Anderson addresses the court re: objection
09:44:04 AM		Johnson withdraws question
09:44:25 AM		Anderson cross examination
09:46:17 AM		Johnson redirect examination
09:49:07 AM		Anderson recross examination
09:51:02 AM		Johnson redirect examination
09:51:37 AM		Court questions witness

Time	Speaker	Note
09:53:01 AM		Anderson recross examination
09:54:01 AM		witness excused
09:54:22 AM		Bette Pollack given oath and testifies
09:54:56 AM		Johnson direct examination
10:03:05 AM		Anderson cross examination
10:08:10 AM		witness excused
10:08:52 AM		Recess
10:18:08 AM		Reconvened - all parties present
10:18:10 AM		Rose Gehring given oath and testifies Johnson direct examination
10:32:37 AM		Anderson objects
10:32:42 AM		Johnson responds
10:47:57 AM		Anderson objects
10:48:39 AM		Anderson cross examination
10:55:33 AM		Johnson redirect examination
10:57:12 AM		Anderson recross examination
10:57:31 AM		Johnson objects - overruled
10:58:01 AM		witness excused
10:58:33 AM		Randy Doman direct examination Johnson direct examination
11:13:30 AM		Anderson objects
11:14:10 AM		Johnson responds
11:14:17 AM		Court allows question
11:15:24 AM		Anderson objects - sustained
11:15:56 AM		Anderson objects - sustained
11:21:36 AM		Anderson cross examination
11:22:34 AM		Johnson redirect examination
11:23:57 AM		witness excused
11:24:22 AM		Skip Brandt given oath and testifies Johnson direct examination
11:30:28 AM		Johnson objects - sustained
11:34:41 AM		Anderson cross examination
11:37:05 AM		Johnson redirect examination
11:38:47 AM		Anderson objects -sustained
11:39:33 AM		witness excused
11:39:59 AM		Jim Rehder given oath and testifies Johnson direct examination
11:51:05 AM		witness excused
11:51:17 AM		Court discusses with counsel
11:51:29 AM		Johnson responds to the court

Time	Speaker	Note
11:52:28 AM		Recess
01:01:20 PM		Reconvened - all parties present
01:01:38 PM		Skott Mealer given oath and testifies Johnson direct examination
01:04:31 PM		Johnson marks Ex #34
01:05:35 PM		Anderson objects
01:05:47 PM		Johnson argues in response
01:06:14 PM		Court responds and discusses with Johnson
01:12:26 PM		Anderson objects - sustained
01:13:34 PM		Johnson marks Ex #34 again
01:17:12 PM		Anderson objects
01:17:20 PM		Johnson responds
01:18:36 PM		Court responds and discusses with Johnson
01:22:26 PM		Anderson addresses the court in response
01:23:13 PM		Court corrects Anderson
01:23:24 PM		Anderson continues
01:25:26 PM		Johnson responds
01:26:31 PM		Court addresses Johnson in response re: newly discovered evidence and Lane Thomas' fear
01:42:25 PM		Anderson objects
01:42:49 PM		Johnson concurs
01:51:22 PM		Anderson objects
01:55:52 PM		Anderson objects - withdraws
01:56:31 PM		Anderson objects
01:57:02 PM		Johnson responds
01:57:14 PM		Objection sustained by the court
01:57:50 PM		Anderson objects
01:58:06 PM		Johnson responds to the court and withdraws question
02:00:56 PM		Anderson objects -sustained
02:01:38 PM		Anderson cross examination
02:03:03 PM		Anderson addresses the court re: witness
02:03:26 PM		Court questions witness
02:03:32 PM		witness responds
02:03:36 PM		Anderson addresses the court
02:03:43 PM		Anderson direct examination of Mealer
02:14:36 PM		Johnson cross examination
02:23:12 PM		Anderson redirect examination
02:23:36 PM		Court addresses counsel
02:23:48 PM		Anderson responds re: release of witness
02:24:13 PM		Johnson responds, witness may be called for rebuttal

Time	Speaker	Note
02:25:13 PM		Recess
02:35:00 PM		Reconvened - all parties present
02:35:14 PM		Kirk MacGregor given oath and testifies Johnson direct examination
02:38:17 PM		Johnson marks Ex#A
02:41:18 PM		Johnson marks Ex #B
02:43:59 PM		Johnson marks Ex #E
02:45:34 PM		Johnson marks Ex #F
02:49:15 PM		Johnson marks Ex #G
02:50:32 PM		Anderson objects
02:50:51 PM		Johnson withdraws questions about content
02:51:22 PM		Anderson addresses court
02:51:31 PM		witness responds
02:52:00 PM		Johnson marks Ex #H
02:57:49 PM		Johnson marks Ex #HH
02:59:40 PM		Anderson objects
03:05:36 PM		Johnson marks Ex #N
03:11:11 PM		Anderson objects
03:11:21 PM		Court addresses Johnson Johnson responses
03:12:00 PM		Court responds
03:12:30 PM		Johnson discusses with the court
03:14:29 PM		Johnson marks Ex#O
03:16:00 PM		Johnson moves to admit Ex #O Anderson objects
03:17:00 PM		Anderson addresses court
03:17:11 PM		Court responds and addresses counsel
03:17:25 PM		Johnson withdraws submission for now
03:19:21 PM		Johnson marks Ex#P
03:26:53 PM		Anderson objects
03:26:58 PM		Johnson responds and explains to the court
03:27:17 PM		Anderson addresses the court in eponse
03:27:37 PM		Court responds
03:28:06 PM		Court sustains objection
03:29:58 PM		Anderson objects
03:30:17 PM		Johnson responds to objection
03:30:40 PM		Court addresses Johnson
03:30:53 PM		Johnson reiterates question
03:39:20 PM		Johnson addresses witness re: document no marked
03:46:38 PM		Johnson moves to strike testimony on Lane Thomas - stricken
03:57:41 PM		Court addresses counsel

Time	Speaker	Note
03:57:51 PM		Johnson replies
03:57:55 PM		Court addresses counsel
04:01:53 PM		Johnson addresses court
04:02:02 PM		Court responds
04:02:05 PM		Johnson addresses court further
04:02:28 PM		Court presents witness with copies of Ex #U and Ex#V
04:05:53 PM		Anderson objects -sustained
04:06:31 PM		Anderson objects - overruled
04:07:04 PM		Johnson interjects
04:07:09 PM		Court addresses Johnson
04:07:22 PM		witness answers question
04:07:29 PM		Court addresses witness
04:17:19 PM		Anderson requests foundation
04:17:27 PM		Johnson rephrases question to witness
04:18:30 PM		Anderson objects
04:18:45 PM		Court addresses Johnson
04:20:25 PM		Johnson moves to admit Ex #V
04:20:35 PM		Anderson objects
04:21:20 PM		Court addresses Johnson
04:22:45 PM		Johnson replies to the court
04:22:53 PM		Anderson addresses the court
04:24:01 PM		Court finds evidence is hearsay and denies admission and is kep under seal
04:26:50 PM		Johnson marks Ex #FF
04:28:14 PM		Anderson objects
04:28:22 PM		Court questions Johnson
04:28:36 PM		Johnson responds
04:28:45 PM		Court sustains objection
04:32:51 PM		Anderson objects - sustained
04:34:59 PM		Anderson objects
04:35:09 PM		Johnson addresses court in response
04:35:24 PM		Court addresses Johnson
04:45:30 PM		Anderson addresses court
04:45:36 PM		Court questions counsel re: witness
04:45:47 PM		witness addresses court
04:45:58 PM		court and counsel discuss witness procedures
04:46:51 PM		witness excused for the day
04:47:03 PM		Anderson addresses court re: exhibits
04:47:38 PM		Anderson request court ro take judicial notice of exhibits
04:47:51 PM		Court takes judicial notice

Time	Speaker	Note
04:48:32 PM		Anderson addresses court in response
04:48:50 PM		Anderson addresses court in reference to witness Schoonover
04:49:22 PM		Johnson argues in response
04:51:14 PM		Court responds to Johnson
04:54:10 PM		Johnson responds to the court
04:54:58 PM		Court addresses Johnson further
04:55:08 PM		Johnson addresses the court
04:55:17 PM		Johnson addresses court re: stipulation for court to take judicial notice
04:56:20 PM		Recess
05:00:56 PM		<div>Signed: _____ Judge</div> <div>Signed: _____ Deputy Court Clerk</div>

Description	State of Idaho v. Mark Lankford CR 83-20158 Motion for New Trial Presiding Judge: James Judd Clerk: Kathy Johnson Court Reporter: Nancy Towler Court room: Orofino - Court room 1 Prosecutor: Lamont Anderson Defense: James Johnson
--------------------	--

Date	8/6/2013	Location	COURTROOM1
-------------	----------	-----------------	------------

Time	Speaker	Note
09:06:44 AM		Court announces case Defendant present with counsel
09:07:11 AM		Johnson addresses the court
09:07:19 AM		MacGregor returns to stand still under oath
09:07:33 AM		Anderson cross examination
09:15:27 AM		Johnson objects
09:15:31 AM		Anderson responds
09:16:00 AM		Johnson responds re: objection
09:16:21 AM		Court sustains objection on narrative issue
09:34:47 AM		Johnson objects
09:34:52 AM		Anderson withdraws question
09:41:20 AM		Johnson objects - withdrawn
09:48:07 AM		Johnson objects -sustained
09:48:36 AM		Johnson objects - sustained
09:51:13 AM		Johnson objects
09:51:19 AM		Anderson questions witness for more information
09:52:30 AM		Johnson objects -sustained
10:14:07 AM		Recess
10:22:22 AM		Reconvened - all parties present
10:22:29 AM		MacGregor still on the stand under oath
10:22:38 AM		Johnson redirect examination
10:40:53 AM		Anderson objects
10:41:08 AM		Court addresses Johnson
10:42:08 AM		Anderson objects
10:42:14 AM		Court addresses Johnson
10:42:22 AM		Johnson withdraws question
10:44:26 AM		Anderson objects - overruled
11:10:55 AM		Anderson objects
11:10:59 AM		Johnson moves to strike
11:11:05 AM		Court strikes volunteer testimony
11:11:20 AM		Anderson objects
11:11:34 AM		Johnson withdraws question
11:12:02 AM		Anderson addresses court re: questioning of witness
11:12:26 AM		Anderson direct examination of witness
11:14:44 AM		Anderson marks Ex #68
11:17:33 AM		Anderson moves to admit Ex#68
11:18:38 AM		Johnson offers no objection - Ex #68 admitted
11:24:38 AM		Court questions counsel re: release of witness
11:25:08 AM		Court questions witness re: Ex #68
11:25:43 AM		witness excused - subject to recall
11:26:20 AM		Jessica R. Bonato given oath and testifies
11:26:55 AM		Johnson direct examination

Time	Speaker	Note
11:31:01 AM		Anderson cross examination
11:33:27 AM		Johnson redirect examination
11:34:43 AM		witness excused
11:35:06 AM		Sunil Ramalingam given oath and testifies
11:35:16 AM		Johnson direct examination
11:41:21 AM		Anderson cross examination
11:44:34 AM		Court questions counsel re: witness
11:44:59 AM		Johnson responds to the court
11:45:18 AM		Court discusses with counsel re: witness
11:45:35 AM		Charles Kavis given oath and testifies
11:45:44 AM		Johnson direct examination
11:49:14 AM		Anderson objects - sustained
11:52:48 AM		Anderson objects
11:59:02 AM		Anderson cross examination
12:06:15 PM		witness excused
12:06:21 PM		Court addresses counsel re: schedule of witnesses
12:06:41 PM		Recess
01:16:09 PM		Reconvened - all parties present
01:16:19 PM		Lane Thomas given oath and testifies
01:16:55 PM		Johnson direct examination
01:17:15 PM		Ray Barker, Attorney for Thomas indicates that witness intends to invoke 5th amendment right
01:19:05 PM		Johnson addresses court in response
01:20:08 PM		Court addresses Johnson re: authority
01:20:23 PM		Johnson responds
01:20:46 PM		Court questions Johnson
01:21:12 PM		Johnson responds to the court
01:21:29 PM		Court questions Johnson
01:23:21 PM		Johnson replies to the court
01:23:59 PM		Court responds to Johnson
01:24:55 PM		Johnson responds to the court
01:25:43 PM		Court responds
01:25:47 PM		Anderson responds to the court
01:28:55 PM		Court questions Johnson
01:29:16 PM		Johnson replies
01:29:34 PM		Court questions Johnson further
01:29:53 PM		Johnson responds to the court
01:30:08 PM		Court discusses with counsel
01:30:29 PM		Anderson addresses the court
01:30:50 PM		Court responds and addresses counsel
01:31:13 PM		Johnson direct examination
01:31:25 PM		witness invokes 5th amendment right

Time	Speaker	Note
01:31:46 PM		Court finds that there is a reasonable foundation and witness is justified in asserting 5th amendment privilege
01:32:54 PM		witness invokes 5th amendment right court finds reasonable scenario
01:37:20 PM		Court addresses counsel and addresses Barker
01:37:34 PM		Barker responds to the court
01:38:16 PM		Court responds to Barker
01:38:58 PM		Court questions Johnson
01:39:06 PM		Johnson responds
01:39:11 PM		Court addresses Johnson
01:39:24 PM		Johnson addresses the court
01:39:30 PM		Johnson responds to the court
01:39:37 PM		Court finds all questions so far within the scenario of the 5th amendment privilege
01:40:03 PM		Johnson questions witness further
01:41:17 PM		Barker objects
01:41:31 PM		Court responds and addresses Johnson
01:42:07 PM		Court finds witness has right to exercise 5th amendment privilege
01:42:43 PM		Johnson addresses the court
01:44:59 PM		Johnson requests the court to find that the witness is "unavailable to testify"
01:45:31 PM		Court questions Johnson
01:47:03 PM		Anderson addresses the court
01:47:29 PM		Court addresses counsel re: 5th amendment privilege
01:48:23 PM		Johnson responds
01:48:33 PM		Court responds to Johnson
01:49:17 PM		witness excused
01:49:34 PM		Court addresses counsel under 804(a)(1)
01:50:10 PM		Johnson questions the court
01:50:15 PM		Court responds
01:50:51 PM		Johnson responds to the court
01:51:03 PM		Ramalingam is released from his subpoenae
01:51:14 PM		Johnson addresses court
01:52:34 PM		Court responds re: Schoonover interview
01:52:49 PM		Johnson responds to the court
01:53:12 PM		Court discusses with Johnson
01:53:43 PM		Anderson responds to the court
01:55:25 PM		Johnson addresses the court in response

Time	Speaker	Note
01:55:47 PM		Court addresses counsel
01:57:34 PM		Johnson responds to the court
01:57:57 PM		Court addresses counsel in response
01:58:54 PM		Johnson responds
01:58:58 PM		Court addresses Johnson
01:59:13 PM		Johnson asks the court for guidance re: closing arguments
01:59:59 PM		Court responds
02:00:20 PM		Johnson responds to the court
02:01:50 PM		Recesss
02:01:53 PM		
		Signed: _____ Judge
		Signed: _____ Deputy Court Clerk

Description	State of Idaho v. Mark Lankford CR 83-20158 Presiding Judge: James F. Judd Clerk: KathyJ Court Reporter: Nancy Towler Court Room: Orofino District Court room Date: August 7, 2013 Prosecutor: Lamont ANderson Defense: James Johnson
--------------------	---

Date	8/7/2013	Location	COURTROOM1
-------------	----------	-----------------	------------

Time	Speaker	Note
09:01:23 AM		Court announces case defendant present with counsel
09:01:38 AM		Court addresses counsel re: exhibits
09:01:45 AM		Johnson addresses court
09:02:38 AM		Jonathon D. Hallin given oath and testifies
09:02:57 AM		Johnson direct examination
09:06:25 AM		Anderson objects
09:06:46 AM		Anderson objects
09:19:56 AM		Anderson objects
09:20:12 AM		Court allows question and answer
09:22:20 AM		Anderson cross examination
09:25:13 AM		Anderson objects - sustained and response stricken
09:25:45 AM		Anderson marks Ex#FF
09:29:33 AM		Anderson continues cross examination
09:38:45 AM		Johnson redirect examination
09:40:28 AM		Anderson recross examination
09:41:37 AM		witness excused
09:42:12 AM		Johnson addresses court re: Schoonover witness
09:42:43 AM		Anderson addresses court
09:42:52 AM		Recess
10:00:53 AM		Reconvened - all parties present
10:01:01 AM		Johnson addresses court re: stipulation to admit exhibits
10:01:21 AM		Exhibits UU, RR, QQ
10:02:43 AM		Anderson stipulates - exhibits admitted
10:02:52 AM		Ex#SS - State stipulates - admitted
10:03:37 AM		EX#TT - State stipulates - admitted
10:04:15 AM		Ex#OO, NN - State offers no objection - admitted
10:05:17 AM		Ex# W - State stipulates - admitted
10:05:35 AM		Ex #S, T - State stipulates - admitted
10:07:24 AM		Johnson addresses stipulation re: witness Schoonover
10:11:15 AM		State stipulates
10:11:22 AM		Johnson marks and moves to admit Ex #MM -admitted
10:13:13 AM		Johnson addresses court
10:14:24 AM		Johnson marks and moves to admit Ex #LL, KK
10:15:03 AM		Anderson objects
10:16:00 AM		Johnson responds to the court
10:16:16 AM		Court responds and addresses Johnson
10:16:27 AM		Johnson responds and argues in support of admission of exhibits
10:22:02 AM		Court questions Johnson

Time	Speaker	Note
10:22:21 AM		Johnson responds to the court
10:23:24 AM		Anderson argues in opposition to admission of exhibits
10:28:57 AM		Johnson argues in response in support of admission of exhibits
10:31:29 AM		Court addresses counsel
10:33:41 AM		Johnson argues further
10:34:42 AM		Court responds
10:36:01 AM		Johnson responds
10:36:06 AM		Court takes admission for exhibits KK and LL under advisement
10:36:20 AM		Johnson marks and moves to admit Ex # L, M
10:37:16 AM		Anderson objects
10:37:42 AM		Johnson argues in support of admission of exhibits
10:40:56 AM		Anderson responds and stipulates that Thomas is unavailable
10:42:06 AM		Johnson addresses the court in response
10:42:22 AM		Court addresses counsel and does find that Lane Thomas is an unavailable witness
10:42:57 AM		Court addresses counsel re: pretrial interviews
10:43:52 AM		Anderson responds to the court
10:44:10 AM		Johnson responds
10:44:18 AM		Court addresses counsel re: hearsay issue
10:44:43 AM		Court questions counsel
10:45:01 AM		Anderson addresses counsel re: issue of Schoonover issue
10:45:26 AM		Court questions Johnson re: relevancy of pretrial interview
10:45:47 AM		Johnson responds
10:47:49 AM		Johnson marks and moves to admit Ex #U - sealed exhibit
10:48:08 AM		Court responds to Johnson
10:48:16 AM		Johnson argues admission of exhibit
10:50:00 AM		Anderson objects to admission
10:50:08 AM		Court questions Anderson
10:50:13 AM		Anderson responds
10:50:34 AM		Recess
10:58:20 AM		Reconvened - all parties present
10:58:31 AM		Johnson argues in response to hearsay exception
11:03:56 AM		Court addresses Johnson
11:04:24 AM		Johnson responds to the court
11:04:29 AM		Anderson addresses the court
11:05:30 AM		Johnson argues in response

Time	Speaker	Note
11:07:04 AM		Court questions Johnson
11:07:49 AM		Johnson responds
11:07:53 AM		Court questions counsel
11:07:58 AM		Anderson responds to the court
11:08:41 AM		Court addresses counsel
11:09:34 AM		Anderson responds to the court
11:10:05 AM		Court addresses counsel
11:10:11 AM		Johnson addresses the court re: immunity
11:10:55 AM		Court addresses Johnson in response
11:11:04 AM		Anderson addresses the court
11:11:54 AM		Johnson argues further
11:13:00 AM		Court responds and addresses counsel
11:13:37 AM		Johnson responds to the court
11:14:18 AM		Court responds
11:14:22 AM		Johnson argues re: criminal liability
11:21:47 AM		Anderson argues in opposition
11:27:33 AM		Johnson argues in response
11:29:59 AM		Court responds and will take admission of exhibit U under advisement
11:30:50 AM		Court questions counsel
11:31:08 AM		Johnson addresses the court
11:31:16 AM		Court questions Amendola
11:31:27 AM		Amendola responds
11:32:06 AM		Johnson addresses the court
11:32:28 AM		Recess
12:45:40 PM		Reconvened - all parties present
12:45:57 PM		Johnson presents Ex#U to the court
12:46:41 PM		Brian Lankford given oath and refuses to take the oath
12:47:13 PM		Brian Lankford given affirmation
12:47:20 PM		Johnson direct examination
12:47:59 PM		Gary Amendola addresses court re: witness asserts 5th amendment right on behalf of witness
12:51:22 PM		Johnson addresses the court
12:51:54 PM		Anderson addresses the court
12:52:43 PM		Court responds and addresses counsel
12:53:25 PM		Court finds witness has right to exercise 5th amendment
12:53:51 PM		Johnson addresses the court
12:54:05 PM		Court responds to Johnson
12:54:58 PM		Johnson questions witness
12:55:10 PM		witness invokes the 5th
12:57:11 PM		Johnson marks Ex #H

Time	Speaker	Note
12:58:24 PM		Johnson moves to admit Ex#H
12:58:39 PM		Anderson objects
12:59:21 PM		Johnson responds to court re: exhibit
01:00:07 PM		Anderson addresses court in aid of objection
01:00:24 PM		Court responds
01:01:05 PM		Johnson responds to the court
01:01:28 PM		Court denies admission of Ex#H
01:02:10 PM		Johnson continues questioning of witness
01:02:20 PM		witness continues to invoke the amendment
01:05:01 PM		witness excused
01:05:15 PM		Amendola questions the court
01:05:33 PM		Court questions counsel
01:05:40 PM		Court addresses Amendola
01:05:53 PM		Johnson addresses the court
01:06:01 PM		Court addresses counsel
01:06:09 PM		Anderson addresses the court re: email
01:08:34 PM		Johnson addresses the court re: Bradbury issue
01:09:33 PM		Johnson refers to Ex #Q
01:09:40 PM		Anderson concurs that counsel may refer to exhibit without being admitted
01:09:55 PM		Court addresses Johnson her may cite opinion
01:10:17 PM		Johnson marks and mvos to admit #G
01:11:01 PM		Anderson objects
01:11:18 PM		Court responds and denies admission of exhibit
01:12:56 PM		Recess
01:25:26 PM		Reconvened - all parties present
01:25:35 PM		Johnson argues re: admission of Ex#AA
01:26:25 PM		Anderson objects to admission
01:26:36 PM		Court responds and denies admission
01:27:10 PM		Court addresses counsel re: timeline and decision re: evidence
01:27:26 PM		Johnson addresses court
01:27:46 PM		Court responds and addresses immunity issue
01:28:22 PM		Counsel address court re: briefs on immunity issue
01:29:20 PM		Briefs due on the 14th re: evidence
01:29:41 PM		Court will decide admissibility issues
01:30:29 PM		Johnson requests transcripts
01:30:37 PM		Court questions Court reporter
01:30:44 PM		Court addresses counsel re: briefs 1st brief due 9/13/13
01:31:24 PM		Johnson addresses court

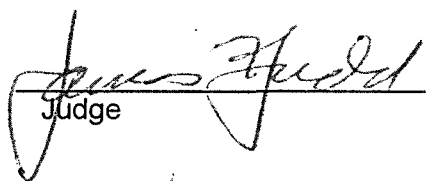

Time	Speaker	Note
01:31:31 PM		Court responds, Johnson's brief due on 9/13/13
01:31:45 PM		Anderson requests 9/23/13 to respond
01:32:10 PM		Johnson's reply brief due 9/30/13
01:32:40 PM		Court addresses counsel
01:33:08 PM		Johnson addresses court re: Rule 35
01:34:14 PM		Court responds
01:34:42 PM		Anderson addresses court
01:34:47 PM		Court responds
01:35:16 PM		Johnson responds
01:35:24 PM		Court addresses counsel re: Rule 35 motion
01:36:30 PM		Recess
01:36:32 PM		<div>Signed:  Judge</div> <div>Signed:  Deputy Court Clerk</div>

EXHIBIT LIST

Case No. CR 83-20158

Date: August 5, 2013

State of Idaho
Plaintiff

Amont Anderson
Attorney

vs.

Mark Bankford
Defendant

James Johnson
Attorney

All Exhibits

Motion Hearing

No.	Description	Not Offered	Admitted	Denied	With-drawn	Original Sub.
le 8	Email for D. Bankford's employer		✓			
A	Newspaper Article 6/23/84			✓		
E	B. Bankford letter 12/25/99			✓		
G	B. Bankford Petition for writ of Habeas Corpus			✓		
H	B. Bankford Affd 4/30/10			✓		
L	Statement of J. Thomas					
M	CID					
O	Letter from Kirk MacGregor to Gary Amendola				✓	
S	Judgment of Conviction		✓			
T	Order Suspending		✓			
U	Sealed Copies of Subpoena					
V	" " "			✓		

on hold
on hold

on hold

EXHIBIT LIST

Case No. CR 83-20158Date: August 5, 2013State of Idaho
PlaintiffLamont Andersson
Attorney

vs.

Mark Hankford
DefendantJames Johnson
AttorneyAll ExhibitsMotion Hearing

No.	Description	Not Offered	Admitted	Denied	With-drawn	Original Sub.
W	transcript		✓			
X	Minutes B.O.C.C. 3/3/08		✓			
Y	Copy of Warrant/Check		✓			
Z	Copy of Warrant/Check		✓			
AA	Idaho County Claim Form		✓			
BB	Idaho County Claim Form		✓			
EE	McGregor letter to BOCC		✓			
KK	C.S.					
LL	transcript					
MM	death Certificate		✓			
NN	transcript		✓			
OO	transcript		✓			
QQ	trial testimony		✓			
RR	trial testimony		✓			
SS	Sgt. Wuzzell Affd		✓			

on hold

on hold

EXHIBIT LIST

Case No. CR 83.20158

Date: August 5, 2013

State of Idaho
Plaintiff

Gamont Anderson
Attorney

VS.

Mark Hankford
Defendant

James Johnson
Attorney

all Exhibits

Motion Hearing

[illegible]

AUG 14 2013

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

Gary I. Amendola
AMENDOLA DOTY & BRUMLEY, PLLC
702 N. 4th Street
Coeur d'Alene, ID 83814
Telephone: (208) 664-8225
Facsimile: (208) 765-1046
ISBN: 4872

Attorneys for Bryan Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK H. LANKFORD,

Defendant.

CASE NO. CR-1983-20158

**MOTION FOR PAYMENT OF
ATTORNEY FEES AND COSTS**

Gary I. Amendola, of the law firm of AMENDOLA DOTY &
BRUMLEY, PLLC, moves this Court for an Order approving payment of
the attorney fees and costs incurred in this case on behalf of
Bryan Lankford through August 12, 2013. This Motion is supported
by the accompanying Affidavit of Gary I. Amendola.

ORIGINAL

DATED this 13 day of August, 2013.

AMENDOLA DOTY & BRUMLEY, PLLC

Attorneys for Bryan Lankford

By: 

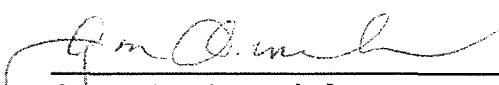
Gary I. Amendola

CERTIFICATE OF SERVICE

I certify that on the 13 day of August, 2013, I caused a copy of the foregoing to be served by the method indicated below or the following:

THE HONORABLE JAMES F. JUDD
SENIOR DISTRICT JUDGE
851 WEST FRONT STREET, APT. 1202
BOISE, ID 83702

☒ U.S. Mail
☐ Hand Delivered
☐ Facsimile to:
☐ Overnight Mail


Gary I. Amendola

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 1:11 O'CLOCK P.M.

AUG 15 2013

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

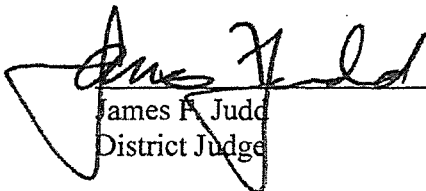
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO, Plaintiff, vs. Mark Henry Lankford Defendant.	Case No. CR 83-20158 ORDER FOR RETURN TO PRISON OF WITNESS BRIAN LANKFORD
---	--

The witness for the defendant, Brian Lankford is currently incarcerated at the Idaho Correctional Institution, Orofino, Idaho;

IT IS HEREBY ORDERED that the Brian Lankford is to be returned to the Idaho State Department of Correction I.M.S.I. located in Boise, Idaho as soon as can be accomplished

Dated this 15th day of August 2013.


James F. Judd
District Judge

CERTIFICATE OF MAILING
ORDER FOR TRANSPORT AND RETURN - 1

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed or delivered by me on 8.15.13 to:

Inmate Placement, fax 327-7445
Idaho County Sheriff, delivered to tray
Idaho County Jailer, delivered to tray
Orofino Prison fax # 208-476-9745

Kathy M. Ackerman, Clerk

by Kathy Johnson
Deputy Clerk


ORDER FOR TRANSPORT AND RETURN - 2

DOCKETED

AUG 15 2013

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

ORDER FOR PAYMENT FOR LEGAL SERVICES


James Judd
District Judge

ORIGINAL

IDAHO COUNTY DISTRICT COURT
AT 3:58 FILED
O'CLOCK P.M.

AUG 15 2013

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF IDAHO**

STATE OF IDAHO,

Plaintiff,

VS.

MARK HENRY LANKFORD,

Defendant.

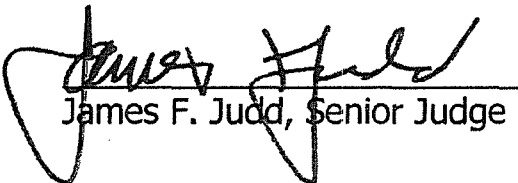
Case No. **CR 1983 20158**

**ORDER FOR PAYMENT
OF ATTORNEY FEES
AND COSTS**

Based upon the Motion for Payment of Attorney Fees and Costs filed in this case by Gary I Amendola and good cause appearing,

IT IS ORDERED that Gary I. Amendola of the law firm of AMENDOLA DOTY & BRUMLEY, PLLC, be paid \$1,611.40 for representation of Bryan Lankford through August 12, 2013.

ENTERED this 15th day of August, 2013.


James F. Judd, Senior Judge

IDAHO COUNTY DISTRICT COURT
FILED
AT 3:40 O'CLOCK P.M.

DOCKETED

AUG 26 2013

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF IDAHO**

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. **CR 1983 20158**

ORDER ON EXHIBITS

Lankford has moved for the admission of the following exhibits to which the State has made certain objections:

1. **Exhibits KK and LL** – Audio Recording and Transcript of the January 9, 2008 interview of Sam York by Chuck Schoonover. The State has objected on the basis of relevancy and hearsay. Lankford asserts that the exhibits are relevant and admissible under I.R.E. 804(b)(6), the "catch-all" hearsay exception;
2. **Exhibits L and M** – Transcript and Audio Recording of the December 19, 2007 interview of Lane Thomas by Chuck Schoonover. The State has objected on the basis of relevancy and hearsay. Lankford asserts that the exhibits are relevant and admissible under I.R.E. 804(b)(6), the "catch-all" hearsay exception; and
3. **Exhibit U** (filed under seal) – Copy of Lane Thomas's May 31, 2010 Idaho State Bar Complaint and supplement against Kirk MacGregor.

The State has objected on the basis of hearsay. Lankford asserts that the exhibit is admissible hearsay under I.R.E. 804(b)(3), the "statement against penal interest" hearsay exception and I.R.E. 804(b)(6), the "catch-all" hearsay exception.

The admission of evidence is committed to the Court's exercise of discretion. See *State v. Hester*, 114 Idaho 688, 760 P.2d 27 (1988); *State v. Terry*, 98 Idaho 285, 561 P.2d 1318 (1977).

Procedural Background

This matter is a motion for new trial based upon the discovery of new evidence, pursuant to I.C. 19-2406(7), that relates to Lankford's contention that Lane Thomas's testimony at Lankford's 2008 was false. The trial in this matter that is being contested was commenced in February of 2008 and resulted in a guilty verdict on February 13, 2008. Lankford's defense team employed Chuck Schoonover as its investigator prior to trial.

Applicable Portions of the Evidence Rules

"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. I.R.E. 401

All relevant evidence is admissible except as otherwise provided by these rules or by other rules applicable in the courts of this state. Evidence which is not relevant is not admissible. I.R.E. 402

I.R.E. 804 - Hearsay exceptions - declarant unavailable

(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

* * *

(4) is unable to be present or to testify at the hearing because of death or * * *

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

* * *

(3) *Statement Against Interest.* A statement which was at the time of its making * * * so far tended to subject declarant to civil or criminal liability, * * * that a reasonable man in declarant's position would not have made the statement unless declarant believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

* * *

(6) *Other Exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the party's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Exhibits KK and LL

Schoonover conducted the January 9, 2008 interview of Sam York in his capacity as Lankford's defense investigator. Sam York is unavailable due to his death on February 20, 2013 (Trial Exhibit MM). I.R.E. 804(a)(4).

Exhibits KK and LL are hearsay and proffered pursuant to I.R.E. 804(b)(6) to support Lankford's contention that Lane Thomas testified falsely at the Lankford trial. Exhibits KK and LL were developed by Lankford's defense investigator and were known to Lankford's defense prior

to trial. The issue of the falsity of Lane Thomas's testimony was raised by Lankford's defense at trial. I find that Exhibits KK and LL are not newly discovered evidence. I find that Exhibits KK and LL are not relevant to Lankford's motion for new trial based upon newly discovered evidence. If Exhibit KK and LL were determined to be relevant, I find that they do not meet the I.R.E. 804(b)(6) requirement of "circumstantial guarantees of trustworthiness." The statement was unsworn, given by an incarcerated individual and not subject to cross-examination. If Lankford's defense had presented Sam York's testimony at trial it would have been under oath and subject to the test of cross-examination.

Exhibits L and M

Schoonover conducted the December 19, 2007 interview of Lane Thomas in his capacity as Lankford's defense investigator. Lane Thomas is unavailable due to his exercise of his 5th Amendment privilege against self-incrimination. I.R.E. 804(a)(1).

Exhibits L and M are hearsay and proffered pursuant to I.R.E. 804(b)(6) to support Lankford's contention that Lane Thomas testified falsely at the Lankford trial. Exhibits L and M were developed by Lankford's defense investigator and were known to Lankford's defense prior to trial. The issue of the falsity of Lane Thomas's testimony was raised by Lankford's defense at trial. I find that Exhibits L and M are not newly discovered evidence. I find that Exhibits L and M are not relevant to Lankford's motion for new trial based upon newly discovered evidence. If Exhibit L and M were determined to be relevant, I find that they do not meet I.R.E. 804(b)(6) requirement of "circumstantial guarantees of trustworthiness." The statement was unsworn, given by an incarcerated individual and not subject to cross-examination. Lankford's defense exercised its right to test

Lane Thomas's testimony at trial; his testimony then was under oath and subject to the test of cross-examination. Schoonover testified at trial regarding this interview with Lane Thomas.

Exhibit U

This exhibit contains information that, if admissible, is newly discovered and relevant to the questions surrounding the veracity of Lane Thomas's testimony at Lankford's 2008 trial. The exhibit consists of unsworn statements made on May 31, 2010 and about June 10, 2010. The statements are hearsay. Lankford proffers the statements under the I.R.E. 804(b)(3) and (6) hearsay exceptions.

I.R.E. 804(b)(3) – Declaration Against Penal Interest Exception

In order for a declarant's out of court statement to be admitted under this exception it must meet several tests:

- a. The declarant must be unavailable as a witness;
- b. The portions of the statement to be admitted must be genuinely self-inculpatory to the declarant and be offered to exculpate the accused; and
- c. Have corroborating circumstances that clearly indicate the trustworthiness of the statement.

See *State v. Meister*, 148 Idaho 236, 241-243, 220 P.3d 1055, 1060-1062 (2009); *State v. Averett*, 142 Idaho 879, 890 136 P.3d 350, 361 (2006); *State v. LaGrand*, 153 Ariz. 21, 27-29, 734 P.2d 563, 569-571 (1987).

The Court has determined that Lane Thomas is unavailable due to his exercise of his 5th Amendment privilege against self-incrimination.

Lankford posits that Lane Thomas's statements in Exhibit U "have probative value in a trial against" Thomas for falsely testifying at Mark Lankford's 2008 retrial. Lankford does not specify which of the Exhibit U statements meet this criteria; but suggests the following: (a) "I was told to testify when he asked that I was offered nothing for my cooperation and

testify that I was being sent back to prison. I did as [he] said to;" and (b) "I believe Mark Lankford to be innocent of his charges...."¹

Statement (a) by itself is not consistent with the trial testimony of Lane Thomas. See Trial Transcript: page 1254, line 16 through page 1255, line 2; page 1257, lines 4-18; page 1262, line 23 through page 1263, line 17; page 1265, Lines 12-24; and page 1267, lines 11-17. Other statements by Thomas in Exhibit U regarding alleged offers, bargains, threats, instructions to lie and coaching are directly contrary to his trial testimony regarding any agreements, coercion, instructions and coaching by the Prosecuting Attorney and would, if admissible, "have probative value in a trial against" Thomas for falsely testifying at Mark Lankford's 2008 retrial.

Statement (b) is not a statement of fact, but rather a statement of opinion. In Exhibit U, Thomas, makes three statements that somewhat imply falsity in his testimony about what Mark Lankford told him:

"Out of fear I repeated what Lankford told me. I also told them that everything wasn't the truth either."

"If I was paid and intimidated to testify about something I pretty much knew nothing about, who else had to deal with the same thing and is a (sic) innocent man in prison because of me?"

"I believe Mark Lankford to be innocent of his charges and due to Mr. MacGregor coercing and threatening people such as myself to give false testimony Mark Lankford would be a free man."

Although it could be implied, no where in Exhibit U does Thomas directly state that he fabricated the statements that he attributed to Mark Lankford in his testimony at the 2008 retrial. None of these three

¹ Defendant's Response to "State's Brief Regarding Admissibility of Exhibit U," Page 2

statements in Exhibit U "have probative value in a trial against" Thomas for falsely testifying about statements made by Mark Lankford at Lankford's 2008 retrial. These three statements are not genuinely self-inculpatory to Thomas. These three statements are inadmissible under the declaration against penal interest exception.

The third requirement of I.R.E. 804(b)(3) that the statements have corroborating circumstances that clearly indicate the trustworthiness of the statement is similar to the requirement of the "catch-all" exception in I.R.E. 804(b)(6) that the statements have "circumstantial guarantees of trustworthiness." The consideration of both measures of the "trustworthiness" of the Exhibit U statements will be examined jointly.

The Supreme Court in *Meister, Id.*, adopted the Arizona standard for applying seven factors in determining trustworthiness saying:

"[A] judge's inquiry, made to assure himself [or herself] that the corroboration requirement of Rule 804(b)(3) has been satisfied, should be limited to asking *whether evidence in the record corroborating and contradicting the declarant's statement would permit a reasonable person to believe that the statement could be true.*" (emphasis added). This will protect the province of the jury as the fact-finder and prevent the judge from "be[ing] able to bootstrap himself [or herself] into the jury box via evidentiary rules." (Internal citations omitted.)

I will now apply the seven factors to consider in determining the trustworthiness of the Exhibit U statements as set forth in footnote 7 of *Meister, supra*. For our purposes the "declarant" in question is Lane Thomas and I will use his name and the word declarant interchangeably.

(1) Whether the declarant is unavailable

Lane Thomas is unavailable due to his exercise of his 5th Amendment privilege against self-incrimination.

(2) Whether the statement is against the declarant's interest

Portions of the statements by Thomas in Exhibit U regarding alleged offers, bargains, threats, instructions to lie and coaching are directly contrary to his trial testimony regarding any agreements, coercion, instructions and coaching by the Prosecuting Attorney and would "have probative value in a trial against" Thomas for falsely testifying on those issues at Mark Lankford's 2008 retrial.

(3) Whether corroborating circumstances exist which clearly indicate the trustworthiness of the exculpatory statement, taking into account contradictory evidence, the relationship between the declarant and the listener, and the relationship between the declarant and the defendant

None of Thomas's statements in Exhibit U are exculpatory of Mark Lankford. The closest any of them come are statements of Thomas's opinion that Mark Lankford is innocent. Thomas's 2008 trial testimony and the contents of Exhibit U and some of the testimony at the instant new trial motion hearing cast some light on Thomas's relationship with Mark Lankford. The relationship began while the two were housed together in the Latah County Jail on separate charges. They had conversations and perhaps one or more arguments. Thomas testified at the 2008 trial about threats he had received from Mark Lankford and his fear of Mark Lankford:

Q. Did Mark Lankford ever threaten you?

A. Mark Lankford made comments in the hallway through the jail that I was a dead man walking. And one comment he said before I left the cell was if I ever repeated anything that I told him that he would make sure that I would be dead. He also made the statement that he's got 23 years worth of favors owed to him.

St. v. Lankford Trial Transcript, P. 1258 L. 22 through P. 1259 L. 4.

Q. Do you remember saying [to Schoonover] but everything I've said to Idaho County was just a bunch of shit?

A. I said what I felt I needed to say so I could be discredited so hopefully I would not be brought into here due to the threats that I have received. My life has been a living Hell since I have met Mark Lankford. I have been assaulted over this. I have been jumped, beaten. I've had knives pulled on me in prison over this. I didn't ask for this. I didn't go to them and say I know something, get me out of jail. There is a lot of fear that I have because of this. Do I want to be sitting here right now, no, I don't.

St. v. Lankford Trial Transcript, P. 1268 L. 23 through P. 1269 L. 9.

The facts developed during the new trial hearing indicate that MacGregor, the Idaho County Prosecutor, attempted on several occasions after the Lankford trial to assist Lane Thomas with his Latah County felony charge that was pending prior to, during and after the Lankford trial. The major reasons for this assistance were based upon MacGregor's fear and Thomas's fear that Mark Lankford could carry out the threats against Thomas that Thomas testified about at the 2008 trial. With this assistance Thomas was granted early termination of his "rider" and probation.

In conjunction with the early termination of his "rider" and probation, Lane Thomas received \$1,500.00 from Idaho County to assist him and his family to move to Texas as part of his probation. The only evidence to support the claim that Thomas was promised this money in advance of the 2008 trial is Thomas's statement in Exhibit U. All other testimony and evidence is to the contrary and indicates that the issue of money from Idaho County came up after the conclusion of Lankford's 2008 trial.

A short time later Thomas requested and received MacGregor's assistance and re-instatement on probation after a 1st probation violation. A short time later Thomas again requested and received MacGregor's

assistance and re-instatement on probation after a 2nd violation. A short time later Thomas again requested and received MacGregor's assistance and a second rider following a 3rd probation violation. In February, 2010 MacGregor refused a 4th request for assistance from Lane Thomas. In May, 2010, while in jail awaiting transport to prison, Thomas filed his bar complaint (Exhibit U).

(4) Whether the declarant has issued the statement multiple times

Exhibit U is the only evidence of Thomas's statements.

(5) Whether a significant amount of time has passed between the incident and the statement

Thomas testified at Mark Lankford's 2008 retrial on February 8, 2008. Thomas's rider review in Latah County was held on February 29, 2008 and he was released on probation on that date. On March 3, 2008 Scott Mealer delivered \$1,500 to Thomas. There is no evidence that Thomas made any of the assertions set forth in Exhibit U until May 31, 2010 when he prepared and submitted Exhibit U to the Idaho State Bar while awaiting transportation to prison after his 4th probation violation.

(6) Whether the declarant will benefit from making the statement

The statement, Exhibit U, was made to the Idaho State Bar. The only benefit that might have been received by Thomas would have been personal.

(7) Whether the psychological and physical surroundings could affect the statement

As explained under factors 3 and 5 above, Thomas was in custody awaiting transport to prison. He previously had expressed fear for his safety from Mark Lankford influence. It is likely that Thomas was unhappy with MacGregor's refusal to go to bat for him on his 4th probation violation.

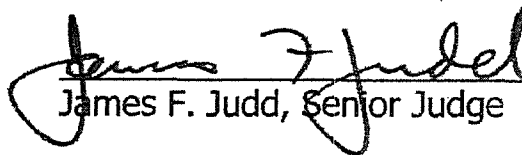
If admitted Exhibit U would present material evidence on Lankford's claim that the State induced Lane Thomas to falsely testify at Lankford's trial. It also appears that Lankford may have no other evidence on that claim. Nevertheless, I conclude that Exhibit U does not have corroborating circumstances that clearly indicate the trustworthiness of the statement nor circumstantial guarantees of its trustworthiness. I further conclude that the evidence in the record corroborating and contradicting statements by Thomas in Exhibit U regarding alleged offers, bargains, threats, instructions to lie and coaching by the Prosecuting Attorney would not permit a reasonable person to believe that the statements could be true.

Exhibit U is not admissible under either of the I.R.E. 804(b)(3) or I.R.E. 804(b) (6) hearsay exceptions.

IT IS ORDERED that:

1. Exhibits KK and LL are refused as non-relevant and as inadmissible hearsay;
2. Exhibits L and M are refused as non-relevant and as inadmissible hearsay; and
3. Exhibit U is refused as inadmissible hearsay.

ENTERED this 26th day of August, 2013.


James F. Judd, Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2013 a true and correct copy of the foregoing was mailed, postage prepaid, or if the Fax service block is checked, sent a copy via facsimile, or if the PDF Email service block is checked, sent a PDF copy by email to:

L. LaMont Anderson
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

☒ **Fax Service**
(208) 854-8074
☐ **PDF Email Service**
Lamont.anderson@ag.idaho.gov

James E. Johnson
Attorney at Law
604 S. Washington St., Suite 3
Moscow, Idaho 83843

☒ **Fax Service**
(208) 567-0551
☐ **PDF Email Service**
jay.dr.juris@gmail.com

Clerk of the District Court

By: Kathy Johnson
Deputy Clerk

AUG 26 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF IDAHO**

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. **CR 1983 20158**

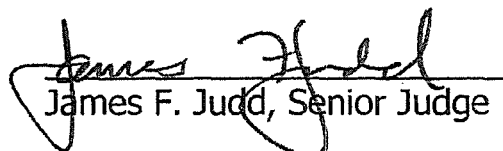
**ORDER SETTING
BRIEFING SCHEDULE**

Based upon the parties agreement expressed on August 7, 2013 at the close of the evidentiary hearing on Lankford's Motion for New Trial,

IT IS ORDERED that the parties comply with the following briefing schedule:

1. Lankford shall submit his opening brief on September 13, 2013;
2. The State shall submit its reply brief on September 23, 2013;
3. Lankford shall submit his closing brief on September 30, 2013; and
4. If any party believes they need additional time, they shall consult with opposing counsel and agree on a revised briefing schedule and submit the same in the form of a stipulated order. If such a stipulation cannot be agreed upon, counsel may seek relief from the court.

ENTERED this 26th day of August, 2013.


James F. Judd, Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2013 a true and correct copy of the foregoing was mailed, postage prepaid, or if the Fax service block is checked, sent a copy via facsimile, or if the PDF Email service block is checked, sent a PDF copy by email to:

L. LaMont Anderson
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

☒ **Fax Service**
(208) 854-8074
☐ **PDF Email Service**
Lamont.anderson@ag.idaho.gov

James E. Johnson
Attorney at Law
604 S. Washington St., Suite 3
Moscow, Idaho 83843

☒ **Fax Service**
(208) 567-0551
☐ **PDF Email Service**
jay.dr.juris@gmail.com

Clerk of the District Court

By: James E. Johnson
Deputy Clerk

IDAHO COUNTY DISTRICT COURT
FILED
AT 4:21 O'CLOCK P.M.

SEP - 6 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
Kathy Ackerman

DOCKETED

D. RAY BARKER
Attorney at Law
204 East First Street
P.O. Box 9408
Moscow, Idaho 83843-0118
(208) 882-6749
Idaho State Bar No. 1380

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	Case No. CR-1983-20158
)	
Plaintiff,)	
)	
vs.	)	ORDER
)	
MARK LANKFORD,)	
)	
<u>Defendant.</u>)	

THE COURT, having examined the Affidavit for Legal Services submitted herein by assigned defense counsel, D. Ray Barker, hereby approves the same and orders payment of Six Hundred Thirty-Eight Dollars and Ninety-Nine Cents (\$638.99).

DATED this 6th day of September, 2013.

[Signature]
District Judge

IDAHO COUNTY DISTRICT COURT
AT 1:08 PM FILED
O'CLOCK P.M.

DOCKETED

SEP 19 2013

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 567-0551
ISB #6383

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,
Plaintiff,

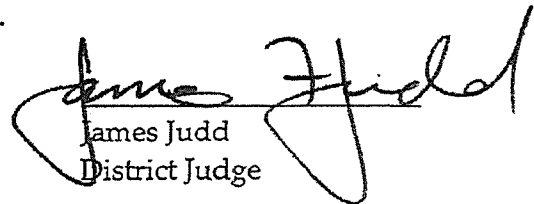
) Case No. CR-83-20158
)
)

) ORDER FOR PAYMENT FOR
) LEGAL SERVICES
)

v.
MARK LANKFORD,
Defendant.

THE COURT, having examined the Statement for Legal Services submitted
herein by assigned defense counsel, James E. Johnson, (for the month of August, 2013)
hereby approves the same and orders payment of Six Thousand Seven Hundred and
Eighty-eight Dollars and Forty Cents (\$6,788.40).

DATED this 18th day of September, 2013.


James Judd
District Judge

ORDER-FOR PAYMENT FOR LEGAL SERVICES

ORIGINAL

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

L. LaMONT ANDERSON, ISB #3687
Deputy Attorney General
Chief, Criminal Law Division
Capital Litigation Unit
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-4539
Facsimile: (208) 854-8074
E-mail: lamont.anderson@ag.idaho.gov

Attorneys for Plaintiff

IDAHO COUNTY DISTRICT COURT
AT 2:19 FILED 9
O'CLOCK P.M.

SEP 23 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

CASE NO. CR 1983-20158

MOTION FOR EXTENSION OF
TIME

COMES NOW, L. LaMont Anderson, Deputy Attorney General, Chief, Capital Litigation Unit and Special Prosecuting Attorney for Idaho County, State of Idaho, and, on behalf of Plaintiff, State of Idaho ("state"), hereby moves this Court for an order extending the time in which the state's response to Defendant's Memorandum in Support of Defendant's Amended and Consolidated Second Motion for a New Trial will be due

MOTION FOR EXTENSION OF TIME - 1

until September 25, 2013. This motion is based on the affidavit of the undersigned attorney. Said affidavit is attached hereto and incorporated by reference herein.

DATED this 23rd day of September, 2013.



L. LaMONT ANDERSON
Deputy Attorney General
Chief, Capital Litigation Unit
Special Prosecuting Attorney for Idaho County

MOTION FOR EXTENSION OF TIME - 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on or about the 23rd day of September 2013, I caused to be serviced a true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, and addressed to the following:

James E. Johnson
Attorney for Mark Lankford
604 S. Washington Street, Suite 3
Moscow, ID 83843
Fax: (208) 882-1362

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Electronic Mail

Honorable James F. Judd
851 W. Front Street, Apt. 1202
Boise, ID 83702

☒ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Electronic Mail



L. LaMONT ANDERSON
Deputy Attorney General
Chief, Capital Litigation Unit

MOTION FOR EXTENSION OF TIME - 3

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 12:44 O'CLOCK P.M.

SEP 24 2013

KATY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

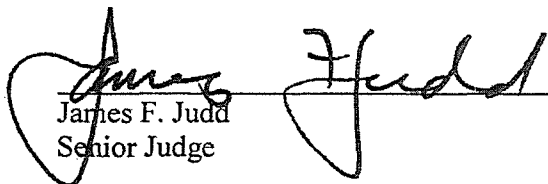
Defendant.

CASE NO. CR 1983-20158

ORDER GRANTING MOTION
FOR EXTENSION OF TIME

Being duly advised and good cause appearing, and with the consent of opposing counsel, the Court grants the state's Motion for Extension of Time. On or before **September 25, 2013**, the state shall submit its response to Defendant's Memorandum in Support of Defendant's Amended and Consolidated Second Motion for a New Trial. Lankford shall submit his closing brief on or before **October 2, 2013**.

DATED this 24th day of September, 2013.


James F. Judd
Senior Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on or about the 24th day of September, 2013, I caused to be serviced a true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, and addressed to the following:

L. LaMont Anderson
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
Fax: (208) 854-8074

☐ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☒ Facsimile

James E. Johnson
Attorney for Mark Lankford
604 S. Washington Street, Suite 3
Moscow, ID 83843
Fax: (208) 882-1362

☐ U.S. Mail
☐ Hand Delivery
☐ Overnight Mail
☒ Facsimile

KATHY M. ACKERMAN, *Clerk*

Kathy Johnson
Clerk of the District Court

IDAHO COUNTY DISTRICT COURT
AT 4:15 FILED 10 O'CLOCK 10 M.

OCT 10 2013

KATY M. CROVER
CLERK OF DISTRICT COURT

DOCKET

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 567-0551
ISB #6383

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,
Plaintiff,

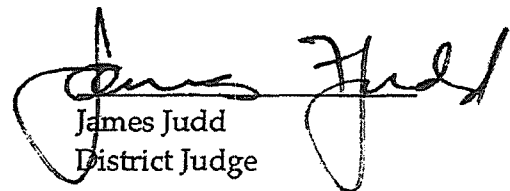
) Case No. CR-83-20158

)
) ORDER FOR PAYMENT FOR
) LEGAL SERVICES

v.
MARK LANKFORD,
Defendant.

THE COURT, having examined the Statement for Legal Services submitted
herein by assigned defense counsel, James E. Johnson, (for the month of September,
2013) hereby approves the same and orders payment of Five Thousand Nine Hundred
and Ninety-Four Dollars and Zero Cents (\$5994.00).

DATED this 10th day of October, 2013.


James Judd
District Judge

ORIGINAL

ORDER-FOR PAYMENT FOR LEGAL SERVICES

IDAHO COUNTY DISTRICT COURT
FILED
AT 11:21 O'CLOCK A.M.

NOV - 7 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
[Signature] DEPUTY

DOCKETED

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 567-0551
ISB #6383

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,
Plaintiff,

) Case No. CR-83-20158
)

) ORDER FOR PAYMENT FOR
) LEGAL SERVICES
)

v.
MARK LANKFORD,
Defendant.

THE COURT, having examined the Statement for Legal Services submitted
herein by assigned defense counsel, James E. Johnson, (for the month of October, 2013)
hereby approves the same and orders payment of One Thousand Five Hundred and
Thirty-One Dollars and Sixty-Four Cents (\$1531.64).

DATED this 6th day of November, 2013.

[Signature]
James Judd
District Judge

ORIGINAL

ORDER-FOR PAYMENT FOR LEGAL SERVICES

DEC - 6 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF IDAHO**

STATE OF IDAHO,

Plaintiff,

VS.

MARK HENRY LANKFORD,

Defendant.

Case No. **CR 1983 20158**

**ORDER ON MOTION
FOR NEW TRIAL**

Mark Henry Lankford's I.C. §19-2406(7) Motion for New Trial based upon newly discovered evidence. **DENIED.**

L. LaMont Anderson, Deputy Attorney General, Boise, Lawyer for State of Idaho, Plaintiff.

James E. Johnson, Moscow, Lawyer for Mark Henry Lankford, Defendant.

PROCEDURAL BACKGROUND

On February 13, 2008 Mark Henry Lankford (Lankford) was convicted of two counts of First Degree Murder for the 1983 killing of Robert and Cheryl Bravence, and on July 17, 2008 Lankford was sentenced to serve two fixed life sentences. The appeal of these convictions is still pending and has been stayed until the resolution of the instant motion.

On February 27, 2008 Lankford filed an initial motion for new trial

based upon I.C. §§ 19-2406(5) and (6) on the grounds that the jury was misdirected in a matter of law and that the verdict was contrary to law and evidence. That motion was denied on October 7, 2009. The appeal of that motion is still pending and has been stayed until the resolution of the instant motion.

On October 29, 2009 Lankford's then counsel filed a Second Motion for New Trial on the basis of newly discovered evidence. Thereafter Lankford filed, *pro se*, an Amended Second Motion for New Trial on December 9, 2009 and a Second Amended Petition for Second Motion for New Trial on April 5, 2011. Lankford's then appointed counsel were permitted to withdraw and new counsel was appointed. Pursuant to court order, Lankford's new counsel filed an Integrated Second Motion for New Trial on April 30, 2012.

Based on new assertions, this court ordered Lankford's counsel to file an Amended and Consolidated Second Motion for New Trial with the provision that "any known claim of newly discovered evidence not stated in the Amended and Consolidated Second Motion for New Trial shall be deemed abandoned and waived by Lankford." Lankford's Amended and Consolidated Second Motion for a New Trial was filed on April 26, 2013 and is the subject of this Order.

Evidentiary hearings on the instant motion were held on July 29, 2013 and August 5 - 7, 2013.

PREVIOUS PROCEEDINGS

The crimes underlying this proceeding were committed in 1983. Since that time there have been numerous proceedings that have some bearing on the instant motion:

Lankford's original trial and conviction for these murders resulted in

his being sentenced to death. Lankford appealed that conviction which was affirmed on appeal in *State v. (Mark) Lankford*, 116 Idaho 860, 781 P.2d 197 (1989), *cert. denied*, 497 U.S. 1032, 110 S.Ct. 3295, 111 L.Ed.2d 803 (1990).

Lankford then sought post-conviction relief which was denied in state court. *(Mark) Lankford v. State*, 127 Idaho 100, 897 P.2d 991 (1995),

Lankford then sought habeas corpus relief in Federal Court. Lankford was denied relief in the trial court, but was granted a new trial on appeal. *(Mark) Lankford v. Arave*, 468 F.3d 578 (2006) *cert. denied* 552 U.S. 943, 128 S.Ct. 206, 169 L.Ed.2d 246 (2007).

LEGAL STANDARDS

The exclusive grounds for a new trial are those stated in I.C. § 19-2406. See *State v. Cantu*, 129 Idaho 673, 931 P.2d 1191 (1997); *State v. Wilson*, 51 Idaho 659, 9 P.2d 497, (1932); *State v. Davis*, 6 Idaho 159, 53 P. 678, (1898), affirmed 21 S.Ct. 210, 179 U.S. 399, 45 L.Ed. 249.

The instant motion for new trial is brought under the provisions of Idaho Code § 19-2406(7) and based upon assertions of newly discovered evidence.

The Idaho Supreme Court in *State v. Ellington*, 151 Idaho 53, 72, 253 P.3d 727, 746 (2011) set out the general basis and standards to determine a new trial motion based upon newly discovered evidence as follows:

A defendant who has been found guilty of a crime may seek a new trial under I.C. § 19-2406. "[w]hen new evidence is discovered material to the defendant, and which he could not with reasonable diligence have discovered and produced at the trial." I.C. § 19-2406(7). "Newly discovered evidence warrants a new trial only if the defendant demonstrates: (1) the evidence is newly discovered and was unknown to the defendant at the time of trial; (2) the evidence is material, not merely cumulative or impeaching; (3) it will probably produce

an acquittal; and (4) failure to learn of the evidence was not due to a lack of diligence on the part of the defendant." *Stevens*, 146 Idaho at 144, 191 P.3d at 222 (citing *State v. Drapeau*, 97 Idaho 685, 691, 551 P.2d 972, 978 (1976)). "[A] defendant wishing to gain a new trial based on newly discovered evidence must show that the evidence meets all four of the requirements set out in Idaho law." *Stevens*, 146 Idaho at 146, 191 P.3d at 224. "Motions for a new trial based on newly discovered evidence are disfavored and should be granted with caution, reflecting the importance accorded to considerations of repose, regularity of decision making, and conservation of scarce judicial resources." *Id.* at 144, 191 P.3d at 222 (citing *State v. Hayes*, 144 Idaho 574, 577, 165 P.3d 288, 291 (Ct.App. 2007)).

In *Ellington*, 151 Idaho 74, 253 P.3d 748 the Supreme Court equated material evidence and substantive evidence and adopted the Court of Appeals distinction between substantive evidence and impeachment evidence.

The Court of Appeals has aptly described the difference between impeachment evidence and substantive evidence:

Unlike substantive evidence which is offered for the purpose of persuading the trier of fact as to the truth of a proposition on which the determination of the tribunal is to be asked, impeachment is that which is designed to discredit a witness, i.e. to reduce the effectiveness of his testimony by bringing forth the evidence which explains why the jury should not put faith in him or his testimony. Examples of impeachment evidence would include prior inconsistent statements, bias, attacks on [the] character of a witness, prior felony convictions, and attacks on the capacity of the witness to observe, recall or relate. Evidence may be both substantive and impeaching.

State v. Marsh, 141 Idaho 862, 868-69, 119 P.3d 637, 643-44 (Ct.App.2004) (quoting *Small v. State*, 132 Idaho 327, 334-35, 971 P.2d 1151, 1158-59 (Ct.App.1998)) (emphasis added).

The Idaho Court of Appeals in *State v. Branigh*, __ Idaho __, __ P.3d

—, 2013 WL 3718751 (Ct.App. 2013) modified the standards for granting an I.C. § 19-2406(7) motion for new trial by including an analysis of issues arising from allegations of prosecutorial misconduct, that had previously been reserved for review in post-conviction proceedings pursuant to I.C. § 19-4101 *et seq.* These modifications depend upon a determination that the newly discovered evidence has been impacted by prosecutorial misconduct: *i.e.* *Brady*¹ violation evidence or the knowing use of perjured testimony.

Brady Violation Evidence

Initially it is important to note that all *Brady* violation evidence is by its nature the result of either willful or inadvertent prosecutorial misconduct. That is the prosecution's failure to disclose exculpatory or impeaching evidence favorable to an accused upon request.

The *Branigh* holding arose out of the appeal of the denial of an I.C. § 19-2406(7) motion for new trial. The *Branigh* trial court found that the evidence in question was "newly discovered" and made additional findings that would support a *Brady* violation. The trial court denied the new trial motion on the basis that the newly discovered evidence did not meet all of the *Drapeau* criteria and without consideration of the newly discovered evidence as "*Brady* violation evidence."

Branigh establishes that the tests for newly discovered *Brady* violation evidence are: (1) the evidence is favorable to the accused because it is either exculpatory or impeaching; (2) the evidence was suppressed by the prosecutor, either willfully or inadvertently; and (3) the evidence is material because there is a reasonable probability that its disclosure to the accused would have led to a different result. A "reasonable probability" of a different result is shown when the prosecutor's evidentiary suppression

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

"undermines confidence in the outcome of the trial." *Branigh*, __ *Idaho* __ citing *Brady*, 373 U.S. at 87; *United States v. Bagley*, 473 U.S. 667, 676-82 (1985); *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995); and *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999).

Because the exclusive grounds for a new trial motion are those stated by statute, *State v. Cantu*, *supra*; *State v. Wilson*, *supra*; *State v. Davis*, *supra* it is implicit in *Branigh* that, in the context of an I.C. §19-2406(7) motion for new trial, the *Brady* violation evidence must be "newly discovered" evidence.

Napue Violation Evidence

The knowing use of false evidence or the failure to correct known false testimony when it occurs is known as a "*Napue* violation" based upon *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.Ed.2d 1217, 1220-21 (1959). The test for establishing a *Napue* violation was stated in *State v. Wheeler*, 149 Idaho 364, 368, 233 P.3d 1286, 1290 (Ct. App. 2010) as

A defendant establishes a *Napue* violation upon showing: (1) the testimony was false; (2) the prosecutor knew or should have known it was false; and (3) the testimony was material.

Branigh establishes that when a prosecutor knowingly uses "*Napue* violation" evidence to obtain a conviction that the conviction "must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *Bagley*, 473 U.S. at 678; *United States v. Agurs*, 427 U.S. 97, 103-04 (1976).

Because the exclusive grounds for a new trial motion are those stated by statute, *State v. Cantu*, *supra*; *State v. Wilson*, *supra*; *State v. Davis*, *supra* it is implicit in *Branigh* that, in the context of an I.C. §19-

2406(7) motion for new trial, the *Napue* violation evidence must be "newly discovered" evidence.

Current Motion

Lankford's current motion asserts various grounds for seeking a new trial. Lankford restated these grounds in his post-hearing memorandum and I have restated them as follows:

1. Perjury at trial – Lane Thomas
 - a. Consideration for Testimony - Relief from incarceration
 - b. Consideration for Testimony – Payment of \$1500 cash
 - c. His children
2. Prosecutorial misconduct - Presentation of perjurious testimony of Lane Thomas
3. *Brady* violation – The deal for Lane Thomas's testimony
4. Perjury at trial – Bryan Lankford
5. Prosecutorial misconduct - Presentation of perjurious testimony of Bryan Lankford
6. *Brady* violation -- The deal for Bryan Lankford's testimony
7. *Brady* violation -- The deal for Lee John Lankford's testimony at sentencing
8. Prosecutorial misconduct - violation of Court Order re: discovery concerning Lane Thomas
9. Procedural error of Judge Bradbury presiding on the case.
10. Recantation of trial testimony by Lane Thomas
11. Ineffective assistance of Counsel – Kovic's failure to recuse himself.

Perjury at Trial

Several of Lankford's new trial claims, numbers 1, 2, 4 and 5 assert allegations of perjurious testimony. Perjury is defined in I.C. § 19-5401 as

Every person who, having taken an oath that he will testify, declare, depose, or certify truly, before any competent tribunal, legislative committee, officer, or person in any of the cases in which such an oath may by law be administered, wilfully and contrary to such oath, *states as true any material matter which he knows to be false*, is guilty of perjury. (Emphasis added.)

Prosecutorial Misconduct

Several of Lankford's new trial claims, numbers 2, 3, 5, 6, 7, and 8, assert prosecutorial misconduct. Even if true, prosecutorial misconduct claims are generally not cognizable under the provisions of I.C. §19-2406. The Idaho Supreme Court addressed this specific issue in *State v. Page*, 135 Idaho 214, 222-23, 16 P.3d 890, 898-99 (2000) stating:

The threshold question is whether the Court can consider a claim for a new trial based upon prosecutorial misconduct. The Court made the following statement in *State v. Jones*, 127 Idaho 478, 481, 903 P.2d 67, 70 (1995):

The grounds upon which a district court may grant a new trial to a noncapital criminal defendant are set out in I.C. § 19-2406. The Court has consistently recognized that this section is a legitimate exercise of the legislature's power to define the substantive law of this state, and sets out an exclusive list of the grounds for a new trial. *See State v. Weise*, 75 Idaho 404, 410, 273 P.2d 97, 100 (1954) ("The grounds for new trial are purely statutory. The court cannot provide any other ground."); *State v. Lankford*, 116 Idaho 860, 873, 781 P.2d 197, 210 (1989) ("We note from the outset that while the decision of whether to grant a new trial is a discretionary matter for the trial judge [,] Idaho Code § 19-2406(7), limits the instances in which that discretion may be exercised.") (footnote omitted), *cert. denied*, 497 U.S. 1032, 110 S.Ct. 3295, 111 L.Ed.2d 803 (1990). Allegations of prosecutorial misconduct at trial are not among the grounds for a new trial provided by I.C. § 19-2406. Accordingly, the trial court did not abuse its discretion in denying Jones' motion on that basis.

Prior to *Branigh*, the asserted new evidence would be evaluated in a I.C. § 19-2406(7) motion for new trial under the long standing *Drapeau* tests. If a finding of prosecutorial misconduct was made in a separate post-conviction proceeding a second evaluation of the evidence would then be

made under the applicable lower standards established for *Brady* violation evidence and *Napue* violation evidence. *Branigh* mandates that such determinations and evaluations be made in new trial motion proceedings under I.C. § 19-2406(7).

Claim 1a Perjury at trial – Lane Thomas – Consideration for Testimony - Relief from incarceration

The evidence presented on this claim is reflected in Thomas' trial testimony. (2008 Trial Transcript pages 1245-1273). Thomas initially denied that he was to receive any benefit from his testimony. Upon further examination Thomas acknowledged that the prosecutor was going to write a letter of cooperation that Thomas hoped would help him on his rider so he could be placed on probation. Thomas denied that there were any other inducements to his testifying.

At the evidentiary hearing on this motion for new trial, MacGregor testified about his conversations with Thomas. (Tr., Vol.II, pp. 229-30, 236, 238, 313-14, 347.) In essence what MacGregor told Thomas was that he, MacGregor, "would try to get him put on probation." MacGregor further testified as to the several post-trial actions he took to assist Thomas, some of which exceed his initial representation. None of MacGregor's testimony varied the terms of the pre-trial understanding of the scope and nature of the agreement regarding the letter of cooperation, *i.e.* MacGregor "would try to get him put on probation." I conclude that Thomas' testimony was not perjurious.

Applying the *Drapeau* tests to this claim:

1. *Newly discovered evidence*: MacGregor's "would try to get him put on probation" statements to Thomas are newly discovered evidence. The letter of cooperation is not newly discovered evidence. The letter of

cooperation was known to Lankford at the time of trial. Thomas' knowledge, expectations and hope for probation from this letter of cooperation were subjected to cross-examination by Lankford.

2. *Material, not merely cumulative or impeaching:* Any additional details concerning the meetings of the prosecutor with Thomas, the "would try to get him put on probation" statements by the prosecutor to Thomas and the prosecutor's thoughts and intents are cumulative or impeaching and not material.

3. *Probably produce an acquittal:* Any additional details concerning the meetings of the prosecutor with Thomas and the prosecutor's statements, thoughts and intents are cumulative or impeaching and are not likely to produce an acquittal.

4. *No lack of diligence by defendant:* Lankford has timely presented and pursued the "newly discovered" evidence.

Claim 1a fails to meet all of the *Drapeau* criteria and is therefore denied.

Claim 1b Perjury at trial – Lane Thomas – Consideration for Testimony – Payment of \$1500 cash

Three weeks after the conclusion of Lankford's re-trial, a "rider review" in Thomas' Latah County was held on February 29, 2008. During that proceeding Thomas' Latah County lawyer, Sunil Ramalingam, informed the court that Idaho County was going to try and help Thomas by providing some financial help so that Thomas could leave the area. Thomas was released on probation on February 29, 2008 and was paid \$1,500.00 in cash by Idaho County on March 3, 2008.

Evidence of the post-trial payment of \$1,500.00 to Thomas on March 3, 2008 is newly discovered evidence. The discussions and interactions

leading up to the March 3, 2008 payment to Thomas are unclear. The memories of the participants, Dennis Albers, Sunil Rmalingam, William Thompson, Skott Mealer, Kathy Ackerman, Randy Doman, and Skip Brandt, all of whom testified at the evidentiary hearing are vague on specifics, but all acknowledged discussions and agreements in the February 29 – March 3, 2008 time frame.

Kirk MacGregor testified that he had no knowledge of the March 3, 2008 payment until Thomas referenced it in his May 2010 Bar Complaint.

Based upon the admissible evidence I find that all discussions between the parties occurred post-trial and that the money was paid to Thomas in the same manner that sums are paid to informants.

Applying the *Drapeau* tests to this claim:

1. *Newly discovered evidence*: The \$1,500.00 payment to Thomas is newly discovered evidence of a post-trial arrangement.

2. *Material, not merely cumulative or impeaching*: The \$1,500.00 post-trial payment to Thomas is not material evidence. There is no admissible evidence establishing that a pre-trial agreement existed. The \$1,500.00 post-trial payment to Thomas is not even cumulative or impeaching as it had not occurred or been agreed to prior to trial.

3. *Probably produce an acquittal*: It is unlikely that in the event of a second re-trial that the \$1,500.00 post-trial payment to Thomas would produce an acquittal. It is uncertain that it even could be considered as impeachment, absent evidence that the \$1,500.00 post-trial payment to Thomas was part of a pre-trial inducement to testify.

4. *No lack of diligence by defendant*: Lankford presented this claim in a timely fashion.

Claim 1b fails to meet the all of the *Drapeau* criteria and is therefore denied.

Claim 1c Perjury at trial – Lane Thomas – His children

During the 2008 trial Thomas had the following exchange during his direct examination by the prosecutor.

Q. (by Mr. MacGregor). Are you married?

A. (by Mr. Thomas). Yes, sir.

Q. Do you have any children?

A. Yes, sir.

Q. What are their names?

A. Sydney, Jacob, Alecia, Zoey, and Naomi.

(2008 Trial Tr. At p. 1246)

Lankford claims that Thomas committed perjury during this exchange by only listing five of his eight children. The existence and identity of the three omitted children were established at the evidentiary hearing on this motion by the testimony of their respective mothers, Josie Guernsey and Jessica Bonato. The testimony of Guernsey indicated that at various times Thomas has denied his paternity of one of the three children. Both of the mothers further testified that Thomas did not have a "father" relationship with the three children.

Applying the *Drapeau* tests to Claim 1c:

1. *Newly discovered evidence*: The knowledge of the three additional children was not known to Lankford before or during trial. It is unlikely that the prosecutor knew of the existence of the three additional children at the time of the trial. The existence of the three additional children is newly discovered evidence.

2. *Material, not merely cumulative or impeaching*: The failure of Thomas to identify three of his eight children in response to the question "What are their names?" would not constitute perjury as the information

was not material to the matter to which Thomas was testifying. See I.C. §18-5401. At most the omission of three of his children by Thomas would be impeachment evidence.

3. *Probably produce an acquittal*: It is unlikely that in the event of a second re-trial that the impeachment of Thomas by his failure to name three of his eight children would have any effect upon the jury or result in a different verdict.

4. *No lack of diligence by defendant*: Lankford presented this claim in a timely fashion.

Claim 1c fails to meet the all of the *Drapeau* criteria and is therefore denied.

Claim 2 Prosecutorial misconduct - Presentation of perjurious testimony of Lane Thomas

This claim is premised upon Lankford's assertion that Thomas' testimony about inducements to testify (Claim 1a above) was false and that the prosecutor knew that Thomas' testimony was false and thus constituted *Napue* violation evidence.

The assertion of a *Napue* violation evidence claim necessitates the evaluation of the evidence under the *Napue* violation evidence tests identified in *Branigh*.

Based upon the evidence, I have previously concluded in resolving Claim 1a that Thomas' testimony relating to inducements to testify was not false. There is no factual basis to alter that conclusion in considering Lankford's Claim 2. Lankford's Claim 2 fails to meet the essential element of a *Napue* evidence violation claim, *i.e.* that the testimony was false.

Claim 2 is denied.

Claim 3 *Brady* violation – The deal for Lane Thomas’s testimony

Lankford claims that the State committed two Brady violations in relationship to the testimony of Lane Thomas. They are characterized by Lankford as 1) the failure to disclose the letter of cooperation and that MacGregor told Thomas “would try to get him put on probation” (Claim 1a); and 2) the failure to disclose that a substantial amount of money would be given to Thomas (Claim 1b).

At trial the letter of cooperation was testified to on direct and cross examination. (2008 Trial Transcript pages 1245-1273). At the evidentiary hearing on this motion for new trial, MacGregor testified about his conversations with Thomas. (Tr., Vol.II, pp. 229-30, 236, 238, 313-14, 347.) In essence what MacGregor told Thomas was that he, MacGregor, “would try to get him put on probation.”

On December 6, 2007, Lankford filed a motion to compel discovery concerning Lane Thomas. On January 7, 2008 the Court entered its Memorandum Decision and Order that compelled the State

“to answer all Mr. Lankford’s discovery requests to the extent such information is held by itself or by others working on its behalf, including law enforcement [or] other agencies that report to the Idaho County Prosecuting Attorney’s Office either regularly or in regards to Mr. Lankford’s case.

Among the information sought were the “promises, benefits, inducements, rewards, or other consideration offered, discussed with or provided to” Thomas “in exchange for any information provided by or sought from” Thomas.

Evidence of the “letter of cooperation” and MacGregor’s “would try to get him put on probation” statements should have been disclosed to Lankford by the Prosecuting Attorney before trial as required by the

January 7, 2008 Memorandum Decision and Order that compelled the State to answer Lankford's discovery requests. The failure to provide such information constitutes a violation of *Brady* and necessitates an evaluation of the evidence under the *Branigh* tests which, with the inclusion of a requirement that the evidence be newly discovered, I have recast as four tests.

Applying the *Branigh* tests to the evidence of the "letter of cooperation" and MacGregor's "would try to get him put on probation" statements:

1. *Newly discovered*: Evidence concerning the letter of cooperation is not newly discovered. The jury was told the purpose behind the letter of cooperation when Thomas testified at the re-trial that he was on a rider and that he wanted to better himself on this rider so that he might receive probation. Certainly the impeachment value of the consideration for Thomas's testimony is evident and it was used at the trial. The evidence of MacGregor's "would try to get him put on probation" statements is newly discovered, having come to light during the evidentiary hearing on the instant motion.

2. *Either exculpatory or impeaching*: The evidence of the "letter of cooperation" and MacGregor's "would try to get him put on probation" statements is clearly impeachment evidence.

3. *Suppressed by the Prosecutor*: The evidence of the "letter of cooperation" and MacGregor's "would try to get him put on probation" statements should have been disclosed prior to trial as required by the January 7, 2008 Memorandum Decision and Order. The State's failure to do so constitutes a *Brady* violation. As indicated above only the newly discovered evidence of MacGregor's "would try to get him put on

probation" statements are relevant to this I.C. § 19-2406(7) motion for new trial.

4. Reasonable probability that evidence would lead to different result:

There is no reasonable probability that evidence of MacGregor's "would try to get him put on probation" statements would lead to different result on a new trial. This new evidence is cumulative impeachment. Thomas was already impeached by the letter of cooperation, which as Lankford's trial counsel noted, Thomas hoped would get him on probation. The jury was told the purpose behind the letter of cooperation when Thomas testified at the re-trial that he was on a rider and that he wanted to better himself on this rider so that he might receive probation. Certainly the impeachment value of the consideration for Thomas's testimony is evident and it was used at the trial.

In large measure Thomas' credibility was and is supported by the circumstances under which his testimony was discovered, *i.e.* Thomas was overheard telling a girl friend of Lankford's disclosures. Thomas did not seek out the State to use this information to benefit himself. Thomas testified that he didn't want to be involved.

In light of the trial impeachment of Thomas and the testimony supporting his credibility, there is no reasonable probability of a different verdict if the prosecutor had timely disclosed his understanding with Thomas.

All of the Claim 1b evidence regarding the payment of \$1,500.00 to Thomas occurred post-trial. If the failure to disclose this evidence is a *Brady* violation, it could not have been disclosed or been available to Lankford until approximately three weeks after the jury returned its verdict. If the non-disclosure of the Claim 1b evidence constitutes a *Brady*

violation it would relate to sentencing, it would not provide a basis for a new trial under I.C. §19-2406(7).

Lankford's Claim 3 is denied.

Claim 4 Perjury at trial – Bryan Lankford

In his AMENDED AND CONSOLIDATED SECOND MOTION FOR A NEW TRIAL Lankford claims that Bryan's re-trial testimony was perjurious based upon post-trial documents authored by Bryan, none of which were admitted at the evidentiary hearing on this motion. At the evidentiary hearing Bryan, upon the advice of counsel, exercised his Fifth Amendment right against self-incrimination and did not testify. Lankford has failed to produce any "new evidence" of Bryan's perjury at the re-trial. Bryan's different and conflicting testimony about Lankford's involvement or non-involvement in the murder of the Bravences was presented to the re-trial jury at length both in direct examination and in cross examination.

Lankford claims that Bryan committed perjury when Bryan did not testify concerning his access to a cell phone while incarcerated in the Idaho County Jail. Lankford learned of Bryan's access to a cell phone sometime prior to his sentencing in July of 2008.

Applying the *Drapeau* tests to Claim 4:

1. *Newly discovered evidence*: The existence of Bryan's access to a cell phone is newly discovered evidence. The existence of Bryan's numerous different and conflicting testimonies about Lankford's involvement or non-involvement in the murder of the Bravences is not newly discovered evidence.

2. *Material, not merely cumulative or impeaching*: The failure of Bryan to testify about his access to a cell phone does not constitute perjury, as Bryan was never asked about such access nor asked generally about any

jail house privileges. At most Bryan's access to a cell phone would be impeachment evidence.

3. *Probably produce an acquittal:* It is unlikely that in the event of a second re-trial that the impeachment of Bryan regarding his access to a cell phone would have any effect upon the jury or result in a different verdict.

4. *No lack of diligence by defendant:* Lankford failed to raise the claim concerning Bryan's access to a cell phone in section 1(b) of the AMENDED AND CONSOLIDATED SECOND MOTION FOR A NEW TRIAL (pages 6-7). Claims not raised are deemed waived and abandoned by such failure.

In any event Claim 4, even if timely raised, fails to meet all of the *Drapeau* criteria and is therefore denied.

Claim 5 Prosecutorial misconduct - Presentation of perjurious testimony of Bryan Lankford

This claim is premised upon an assertion that Bryan's testimony about Lankford's involvement in the murder of the Bravences, the inducements Bryan received to testify and Bryan's access to a cell phone were perjurious and that the prosecutor knew that Bryan's testimony was false, and thus constituted *Napue* violation evidence.

The assertion of a *Napue* violation evidence claim necessitates the evaluation of the evidence under the *Napue* violation evidence tests identified in *Branigh*.

Based upon the evidence, I have previously concluded in resolving Claim 4 that Bryan's testimony about Lankford's involvement in the murder of the Bravences, the inducements Bryan received to testify and Bryan's access to a cell phone was not false. There is no factual basis to alter that conclusion in considering Lankford's Claim 5. Lankford's Claim 5 fails to

meet the essential element of a *Napue* evidence violation claim, *i.e.* that the testimony was false.

Claim 5 is denied.

Claim 6 *Brady* violation - The deal for Bryan Lankford's testimony

Claim 6 is premised on the State's failure to disclose to Lankford that Bryan had access to a cell phone while incarcerated in the Idaho County Jail prior to Lankford's re-trial. Lankford contends that Bryan's access to a cell phone constitutes *Brady* violation evidence. Evidence of Bryan's access to a cell phone would have been favorable to Lankford as impeachment evidence and should have been disclosed by the Prosecuting Attorney before trial as required by *Brady*. The failure to provide such evidence makes it *Brady* violation evidence. Lankford failed to raise this *Brady* violation evidence claim concerning Bryan's access to a cell phone in the *Brady* Violations section (section 3) of the AMENDED AND CONSOLIDATED SECOND MOTION FOR A NEW TRIAL (pages 10-14). Claims not raised are deemed waived and abandoned by such failure.

While Lankford's Claim 6 is deemed waived and abandoned, an evaluation of the evidence of Bryan's access to a cell phone under the *Branigh* tests would not provide Lankford with any relief.

Applying the *Branigh* tests to the evidence of Bryan's access to a cell phone:

1. *Newly discovered*: The evidence of Bryan's access to a cell phone is newly discovered, having come to the attention of Lankford's defense team a day or so before Lankford's July 17, 2008 sentencing.

2. *Either exculpatory or impeaching*: The evidence of Bryan's access to a cell phone is clearly impeachment evidence.

3. *Suppressed by the Prosecutor.* The evidence of Bryan's access to a cell phone should have been disclosed prior to trial as required by *Brady*. The State's failure to do so constitutes a *Brady* violation.

4. *Reasonable probability that evidence would lead to different result.* I find there is no reasonable probability that evidence of Bryan's access to a cell phone would lead to different result on a new trial. At the re-trial Bryan was examined at length on his different and conflicting statements about Lankford's involvement or non-involvement in the murder of the Bravences. Bryan testified at length about what inducements to testify that he had or had not received. Bryan's access to a cell phone would have added little to his impeachment.

Lankford's Claim 6 having been waived and abandoned is denied.

Claim 7 *Brady* violation -- The deal for Lee John Lankford's testimony at sentencing

This claim is unique and will be dealt with summarily. This claim deals exclusively with issues surrounding the sentencing hearing. Even if true, this claim would provide no basis for granting Lankford the new trial sought under I.C. § 19-2406(7).

Claim 7 is denied.

Claim 8 Prosecutorial misconduct - violation of Court Order re: discovery concerning Lane Thomas

As Lankford acknowledges in his post hearing Memorandum in Support (page 61-62) prosecutorial misconduct claims are generally not cognizable under the provisions of I.C. §19-2406. See *State v. Page, supra*. To the extent the issues in Claim 8 can be addressed in this motion, they were dealt with as *Brady* violation evidence claims under Claim 3 and denied.

Claim 8 is denied.

Claim 9 Procedural error of Judge Bradbury presiding on the case.

Based upon the Supreme Court's holding in *Bradbury v. Idaho Judicial Council*, 149 Idaho 107, 233 P.3d 38 (2009) that at the time of Lankford's re-trial Judge Bradbury was not a resident of Idaho County as required by I.C. §§ 1-803 and 1-809, Lankford claims that the trial proceeding was invalid. Lankford provides no authority for this assertion other than the citation to *Bradbury* and I.C. §§ 1-803 and 1-809.

In 2002 Judge Bradbury was elected a district judge of the Second Judicial District with resident chambers in Idaho County. Judge Bradbury took office in January 2003 and maintained his residence in Idaho County. In 2006, without opposition, Judge Bradbury was re-elected a district judge of the Second Judicial District with resident chambers in Idaho County. The Idaho Judicial Council commenced informal proceedings against Judge Bradbury on September 12, 2007. Formal proceedings were commenced on July 22, 2008. There is no evidence offered of any temporary or interim suspension of Judge Bradbury's judicial powers during the proceedings before the Judicial Council or the Idaho Supreme Court.

The Supreme Court in *Bradbury* did not determine when Judge Bradbury's "actual residence" changed, but did determine that Judge Bradbury was not actually residing in Idaho County

during the period preceding the time he was interviewed by Hamlin. (October 31, 2007). It is not clear from the record when Petitioner began using his Lewiston house as his primary residence. What is clear is that he was not complying with the residence requirements of Idaho Code sections 1-803 and 1-

809 when these proceedings were initiated (July 22, 2008) because he was living in Nez Perce County. (Dates added).

Bradbury v. Idaho Judicial Council, 149 Idaho 107, 119, 233 P.3d 38, 50 (2009).

The Idaho Const. Art. V, § 20 provides that the "district court shall have original jurisdiction in all cases, both at law and in equity". Only the Idaho Supreme Court is vested with the authority to discipline or remove judges. See Idaho Const. Art. V, §§ 2 and 28; I.C. § 1-2103; and *Idaho Judicial Council v. Becker*, 122 Idaho 288, 292-93, 834 P.2d 290, 294-95 (1992). In resolving the issues raised in *Bradbury* the Supreme Court took "a no harm, no foul approach" and imposed no form of disciplinary action against Judge Bradbury and simply required him to comply with its Order within a 21-day period. No evidence has been offered that Judge Bradbury did not so comply. This resolution and the lack of any interim suspension strongly indicates that the Supreme Court saw no diminishment in Judge Bradbury's judicial power or jurisdiction.

As the State points out in its Response, pages 43-47, at Lankford's request the venue of Lankford's re-trial was transferred to the Shoshone County District Court in the First Judicial District. Pursuant to this change of venue, the Idaho Supreme Court under the authority of Idaho Const. Art. V, §12 specifically assigned Judge Bradbury to preside over this "out of district" trial.

As this Claim 9 is brought pursuant to an I.C. § 19-2406(7) motion for new trial, the *Drapeau* tests should be applied to Claim 9:

1. *Newly discovered evidence*: Lankford's re-trial commenced on February 4, 2008. The jury returned its verdict on February 13, 2008. The formal proceedings were commenced on July 22, 2008. No evidence has

been presented that Lankford was aware of this issue until some time post-trial. I find that for purposes of this motion, facts relating to Judge Bradbury's "actual residence" are newly discovered.

2. *Material, not merely cumulative or impeaching*: Evidence of Judge Bradbury's failure to actually reside in Idaho County would not impeach any witness. Evidence of Judge Bradbury's failure to actually reside in Idaho County is not material to the issues tried in Lankford's re-trial. At most such evidence might have raised issues concerning Judge Bradbury's jurisdiction to preside over Lankford's re-trial. As I have indicated above, such steps would have been of no avail absent action by the Idaho Supreme Court.

3. *Probably produce an acquittal*: Evidence of Judge Bradbury's failure to actually reside in Idaho County would not be admissible at trial and could have no effect upon the jury nor result in a different verdict.

4. *No lack of diligence by defendant*: Lankford timely raised this issue, although it is not appropriate for an I.C. § 19-2406(7) motion for new trial.

In any event Claim 9 fails to meet all of the *Drapeau* criteria and is therefore denied.

Claim 10 Recantation of trial testimony by Lane Thomas

Based upon trial exhibits that were not admitted, Lankford asserts that Lane Thomas has recanted his trial testimony. In order for there to be a recantation of trial testimony, the recanting witness, under oath, must specify how his trial testimony was false and what the true testimony would be. See *Larrison v. United States*, 24 F.2d 82 (7th Cir.1928), *quoted in State v. Scroggins*, 110 Idaho 380, 385, 716 P.2d 1152, 1157, *cert. denied*, 479 U.S. 989, 107 S.Ct. 582, 93 L.Ed.2d 585 (1986); *State v. Fields*, 127 Idaho 904, 908 P.2d 1211 (1995) *State v. Ransom*, 124 Idaho

703, 864 P.2d 149 (1993), *cert. denied*, 510 U.S. 1181, 114 S.Ct. 1227, 127 L.Ed.2d 571 (1994).

Lankford has not provided the court with any such evidence of recantation by Thomas.

Claim 10 is denied.

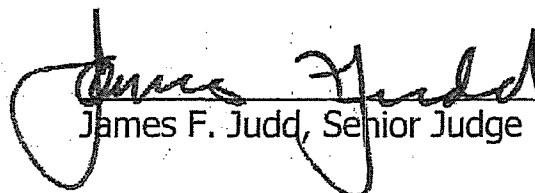
Claim 11 Ineffective assistance of Counsel – Kovich's failure to recuse himself.

The issue of Kovich's excluding himself from dealing with Lane Thomas was dealt with at length before Lankford's re-trial. It is not newly discovered evidence and provides no basis for a new trial motion under an I.C. §19-2406(7). Even if the evidence were newly discovered, ineffective assistance of defense counsel is not one of the statutory grounds for a new trial under I.C. § 19-2406. See *State v. Lopez*, 139 Idaho 256, 77 P.3d 124 (2003); *State v. Parrott*, 138 Idaho 40, 57 P.3d 509 (2002); *State v. Cantu*, 129 Idaho 673, 931 P.2d 1191 (1997); *State v. Roberts*, 129 Idaho 194, 923 P.2d 439 (1996); *State v. Gomez*, 126 Idaho 83, 878 P.2d 782 (1994), certiorari denied 115 S.Ct. 522, 513 U.S. 1005, 130 L.Ed.2d 427.

Claim 11 is denied.

IT IS ORDERED that Lankford's Amended and Consolidated Second Motion for a New Trial filed on April 26, 2013 be and the same hereby is **DENIED**.

ENTERED this 6th day of December, 2013.


James F. Judd, Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2013 a true and correct copy of the foregoing was mailed, postage prepaid, or if the Fax service block is checked, sent a copy via facsimile, or if the PDF Email service block is checked, sent a PDF copy by email to:

L. LaMont Anderson
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

☐ Fax Service
(208) 854-8074
☐ PDF Email Service
Lamont.anderson@ag.idaho.gov

James E. Johnson
Attorney at Law
604 S. Washington St., Suite 3
Moscow, Idaho 83843

☐ Fax Service
(208) 567-0551
☐ PDF Email Service
jay.dr.juris@gmail.com

Clerk of the District Court

By: James E. Johnson

Deputy Clerk

IDAHO COUNTY DISTRICT COURT
FILED
AT 2:04 O'CLOCK P.M.

DEC - 6 2013

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF IDAHO**

STATE OF IDAHO,

Plaintiff,

VS.

MARK HENRY LANKFORD,

Defendant.

Case No. **CR 1983 20158**

**ORDER ON PENDING
I.C.R. 35 MOTION**

At the conclusion of the evidentiary hearing on Lankford's I.C. § 19-2406(7) the parties and the court were advised that a *pro-se* filed I.C.R. 35 Motion remained unresolved. Both parties have submitted responses to this disclosure.

IT IS ORDERED that;

1. Unless within 15 days of the date of this Order either counsel requests an opportunity to supplement the record, an opportunity to submit additional authority, or oral argument, the I.C.R. 35 Motion shall be deemed submitted on the existing record and briefing.

ENTERED this 6th day of December, 2013.


James F. Judd, Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2013 a true and correct copy of the foregoing was mailed, postage prepaid, or if the Fax service block is checked, sent a copy via facsimile, or if the PDF Email service block is checked, sent a PDF copy by email to:

L. LaMont Anderson
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

☐ Fax Service
(208) 854-8074
☐ PDF Email Service
Lamont.anderson@ag.idaho.gov

James E. Johnson
Attorney at Law
604 S. Washington St., Suite 3
Moscow, Idaho 83843

☐ Fax Service
(208) 567-0551
☐ PDF Email Service
jay.dr.juris@gmail.com

Clerk of the District Court

By: Kathy Johnson

Deputy Clerk

DEC 19 2013

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567 0551
ISBN 6383

DOCKETED

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,)	CR 83-20158
)	
Plaintiff,	)	DEFENDANT'S MOTION
	)	FOR EXTENSION OF TIME
V.	)	RE: PENDING RULE 35 MOTION
MARK HENRY LANKFORD,)	
Defendant.)	
_____)	

Mark Lankford, through his counsel James E. Johnson, moves the Court for an extension of time regarding the pending Rule 35 motion before the Court. The court ruled on December 6, 2013 that both parties had fifteen days from the filing of that order in which to file a request an opportunity to supplement the record, an opportunity to submit additional authority, or oral argument; if such a request were not made, the matter would be deemed submitted on the existing record.

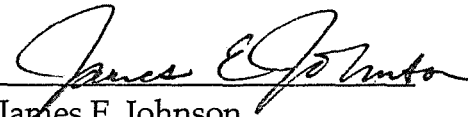
Due to the holidays, the Defendant's need to have transcripts prepared, and the amount of work anticipated to prepare court filings, the Defendant requests that record

ORIGINAL

supplements and additional authority be submitted to the court by January 6, 2014. Oral argument could be scheduled for a time convenient to Court and counsel.

This motion is based on the sworn statement of the undersigned attorney, which is attached and incorporated by reference.

Dated this 18th day of December, 2013.


James E. Johnson
Attorney for Mark Lankford


Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. mail to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

The Honorable James F. Judd
851 W. Front Street, Apt. 1202
Boise, ID 83702-5860
judgejudd@gmail.com

On the 18th day of December, 2013


James E. Johnson

IDAHO COUNTY DISTRICT COURT
AT 4:17 FILED
O'CLOCK P.M.

DEC 19 2013

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

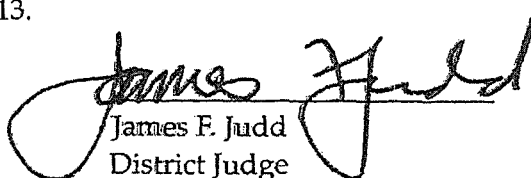
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
	)	ORDER GRANTING
Plaintiff,	)	DEFENDANT'S MOTION
	)	FOR EXTENSION OF TIME
V.	)	RE: PENDING RULE 35 MOTION
MARK HENRY LANKFORD,)	
Defendant.)	
_____)	

On motion of the Defendant, without opposition of the State, and good cause appearing, it is hereby ordered that the deadline to supplement the record or to submit additional authority is EXTENDED to January 6, 2014.

The Court will consult with counsel by telephone conference to schedule oral argument.

Dated this 19th day of December, 2013.


James F. Judd
District Judge

ORDER GRANTING DEFENDANT'S MOTION FOR EXTENSION OF TIME
RE: PENDING RULE 35 MOTION

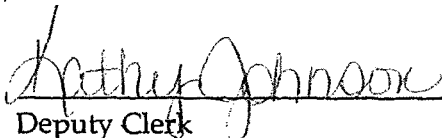
Clerk's Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. mail and/or emailed to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

Jay Johnson
604 S. Washington, suite 3
Moscow, ID 83843
jay.dr.juris@gmail.com

On the 19th day of December, 2013

KATHY M. ACKERMAN, Clerk

Deputy Clerk

ORDER GRANTING DEFENDANT'S MOTION FOR EXTENSION OF TIME
RE: PENDING RULE 35 MOTION

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567 0551
ISBN 6383

Attorney for Mr. Mark Lankford

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 5:51 O'CLOCK P.M.

JAN - 6 2014

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	CR 83-20158
)	
Plaintiff,	)	MOTION FOR RE-SENTENCING
	)	PURSUANT TO BRADY VIOLATIONS,
V.	)	AND MEMORANDUM IN SUPPORT
MARK HENRY LANKFORD,)	
Defendant.)	
_____)	

Comes now the Defendant through his attorney James E. Johnson and moves the Court for an order vacating the sentence imposed in this case on July 17, 2008 and scheduling a hearing for the Defendant to be re-sentenced. This motion is based on violations of the Defendant's constitutional protections outlined in *Brady v. Maryland*, 373 U.S. 83 (1963) and as delineated by *Sivak v. Harrison*, 658 F.3d 898 (9th Cir. 2011).

Memorandum In Support

If requested by the defendant, information that would be exculpatory, mitigating in the sentencing phase, or used to impeach a witness must be disclosed to the

MOTION FOR RE-SENTENCING PURSUANT TO BRADY VIOLATIONS,
AND MEMORANDUM IN SUPPORT

924

ORIGINAL

defendant. *Brady v. Maryland*, 373 U.S. 83 (1963); *Sivak v. Hardison*, 658 F.3d 898 (9th Cir. 2011).

The *Brady* violations occurred in Prosecution's relationships with three witnesses: Lee John Lankford, Bryan Lankford, and Lane Thomas. Taking these in turn:

The payment to Lee John Lankford

The Prosecution paid Lee John Lankford \$2152.06 by a county warrant issued on August 15, 2008. See Evidentiary Hearing Exhibit Z. Furthermore, there was an agreement before the sentencing hearing for such a payment. See Exhibit EE. Lee Lankford acknowledged he had been paid. See Exhibit UU. Prosecutor MacGregor acknowledged making the arrangement to pay Lee Lankford for his purported lost wages. Transcript of Evidentiary Hearing, August 5-6, 2013, p.361.

The *Sivak* Court differentiated between *Brady* violations which demand a retrial and *Brady* violations which apply to the sentencing process. *Sivak*, p. 914. The *Sivak* court found that although violations occurred during the trial process, had the tainted evidence been disregarded, there was sufficient evidence to support a conviction; therefore it did not overturn the conviction and remand for trial. However, the violations which occurred directly affected the sentencing process in that the degree of the defendant's culpability was at issue. Payment of a critical state witness regarding the conviction was ruled to be additional but not necessary to obtain that conviction, but that same witness's perjured testimony led to the degree of the sentence that was

imposed on the defendant. Id., pp. 914-15. Information regarding the State's negotiation with and subsequent payment to that witness was withheld from the defendant, with the result that the witness was not impeached as he should have been.

Lee Lankford was paid a substantial amount of money to testify at Mark Lankford's sentencing. In addition to his travel and housing expenses, he was paid \$2152.06, purportedly for lost wages. That information was not disclosed to the Defendant's attorneys. Transcript of Evidentiary Hearing, August 6, 2013, p. 394; Id., August 7, p. 448. Lee Lankford's testimony damned the Defendant's character since his youth. With the information that this testimony was agreed to be paid for, the Defendant could have impeached the witness's account of the Defendant's character, particularly since that testimony was different from the testimony that Lee Lankford gave at trial. While it is hard to assess what effect Lee Lankford's testimony had on the sentencing court, it could only be harmful. Lee Lankford was the only live witness on behalf of the State at the sentencing to give testimony about the Defendant's character.

Cell phones provided for Bryan Lankford.

As noted in the Order of December 6, 2013, the Defendant failed to claim a *Brady* violation in his Consolidated And Amended Second Motion For A New Trial, filed on April 26, 2013. In response to the Defendant's bringing up the violation in his argumentative briefing of September 12, 2013, the Court noted that the Defendant had effectively waived that argument by failing to assert it in his motion.

However, the evidence is now in the record that Bryan Lankford was provided with a cell phone by the State in the months well before the trial of February, 2008. *Id.*, pp. 178-179; 200-01. It qualifies as a *Brady* violation. *Sivak*. The additional facilitation of communication with Francoise, without informing the defendant, was also a *Brady* violation. *Id.* This motion applies only to the sentencing phase, and Bryan Lankford did not testify at that hearing. However, the Court noted in its order that had the provision of the cell phones been claimed as a *Brady* violation, it would have been ruled as such a violation. Order On Motion For New Trial, entered December 6, 2013, p. 19.

Because Bryan only testified at trial, his only cross-examination occurred at trial. The Court has already noted that both Bryan and Lane Thomas were extensively cross-examined at trial. However, cross-examination can be an inadequate substitute for hard evidence, which was obviously available to the State.

The next question would be what the effect of such a violation would be, since Bryan did not testify at the sentencing.

Despite Bryan's history of unreliability, had the Defendant known of the cell phone before trial, it would have been useful information to impeach Bryan at trial. In its order, the court noted that Bryan was impeached at length at trial, and it is only speculation that any more fodder would have aided the Defendant.

However, by July 17, 2013, Bryan's relationship with the State had again soured. He had filed a suit against Idaho County, naming the county commissioners and sheriff

as defendants. In The Matter Of The Application For A Writ of Habeas Corpus, filed July 10, 2008. The suit was dismissed summarily by the Idaho County District Court, but it is indicative of Bryan's changed attitude toward the State at that time.

Had the Defendant been fully informed of Bryan's cell phone in a timely manner, it would have served the Defendant to call Bryan as a witness at the sentencing. At a minimum, he could have explained any change of heart he had had. The State chose not to call Bryan as a witness for the sentencing. After such extensive testimony at trial, it would have seemed normal to call Bryan for the sentencing. It is a reasonable inference that the State did not call Bryan because he had changed his attitude, and the State knew Bryan would change his story when he was unhappy.

It was a *Brady* violation to not inform the Defendant of the cell phone, and a violation to not inform the Defendant of the communication with Francoise on Bryan's behalf. It is also a reasonable inference that had the State disclosed that required information to the Defendant, the Defendant would have changed his strategy for the sentencing hearing. Had Bryan undermined his own trial testimony, or had Bryan's testimony undercut the testimony of Lee Lankford, the outcome of the sentencing could well have changed.

The *Brady* Violations regarding Lane Thomas.

The Court ruled in its December 6, 2013 Order that the non-disclosure of the "letter of cooperation" and MacGregor's statement that he would try to get Lane Thomas "put on probation" (compared to being in prison) constituted a *Brady* violation. The Court further ruled that there was no reasonable probability that such disclosure would have led to a different result at trial. Order at 15-16. That newly-discovered evidence was characterized as cumulative impeachment.

The Court ruled in its December 6, 2013 Order that the non-disclosure of the \$1500 cash payment to Lane Thomas did not qualify as a *Brady* violation regarding the trial phase. The Court did allow for the possibility that the non-disclosure of the payment might qualify as a *Brady* violation regarding the sentencing phase. *Id.*, p. 16-17. The payment occurred well before sentencing, and was certainly known by an agent of the State, because Skott Mealor admitted to delivering the payment. That action must be attributed to the prosecutor's office. *Giglio v. U.S.*, 405 U.S. 150, 92 S.Ct. 1555 (1972). That payment should have been made available to impeach Lane Thomas.

Lane Thomas did not testify at the sentencing. However, he was referred to in the Prosecutor's sentencing argument : "Couple that with the testimony of Lane Thomas, and I would respectfully suggest that's probably some of the most powerful testimony ...". Transcript of Sentencing Hearing, p. 2091. Certainly Lane Thomas played

a great role in the prosecution's case, despite the protests of the Prosecutor. Transcript of the Evidentiary hearing, August 5, p.225; August 6, 2013, 288-289; cf. J. Bradbury: "But with the testimony of Lane Thomas I find it much easier to deny the motion." Transcript of Trial Testimony, p. 1580.

The effect of the non-disclosure to the Defendant in this instance is that had that disclosure been made, the Defendant likely would have subpoenaed Thomas to testify about that very event at the sentencing. (As shown by the testimony of Bill Thompson at the evidentiary hearing, Thomas had already returned to Idaho from Texas before the sentencing date of July 17, 2008. Transcript of Evidentiary Hearing July 29, 2013, p. 82.) They would have forced the issue of the payment to be before the Court at a much earlier stage. That in itself would have undermined the State's version of the Defendant's culpability. The testimony Thomas gave implicated the Defendant as an instigator, one who prompted Bryan to act. That has been the State's version of events since 1983. In order to prove their case in 2008, they relied on Lane Thomas. If Lane Thomas had testified at the sentencing in July 2008, the impeachment due to his receipt of funds could well have changed the sentencing judge's opinion of the testimony that convicted the Defendant, and changed the degree of his culpability.

Regarding the application of *Brady* to the sentencing phase, the Defendant maintains that both the payment to Thomas and the disclosure of MacGregor's statements to Thomas regarding relief from incarceration were significant *Brady*

violations which would have affected the Court's assessment of the Defendant at sentencing.

The accumulation of *Brady* violations.

Overall, the sentencing phase of the case was highly prejudiced against the Defendant by the violations of his constitutional right to due process as outlined above, by the non-disclosure of information which should have been available to the Defense. The prejudice cannot be measured. There is no description of the weight attached to Lee Lankford's sentencing testimony, and obviously no attribution to the trial testimony of Bryan Lankford and Lane Thomas. But the overall prejudice was undoubtedly significant.

On top of that, the Defendant has asserted in his Rule 35 motion that he was prejudiced by four other factors. One of those factors -- the allowing of non-family members to give victim impact statements in violation of *Payne* -- contributes to the overall prejudice. Lee John Lankford should have been impeached with the withheld information, Bryan Lankford and Lane Thomas should have been called to testify and had their trial testimony impeached, and Stinemetz and Bartzner should have had their victim impact testimony excluded. None of those things happened, and the fault lies at the feet of the Prosecutor. The effect of the prejudice cannot be measured, and the Defendant suffered accordingly in the sentencing.

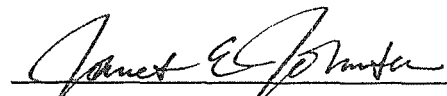
The trial judge did not refer to any of the witnesses directly in pronouncing the sentence. He referred to the trial evidence. The trial evidence which convicted Mark Lankford was that of Bryan Lankford and Lane Thomas. Their testimony should have been elicited at sentencing, but was not due to the aforementioned failures of disclosure on the part of the prosecution. The *Brady* violations thus directly contributed to the length of the sentence.

Evidence is material under *Brady* if it creates 'a reasonable probability of a different result.' *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). The pattern of failure to inform the Defendant of significant impeachment evidence of the prominent State witnesses was egregious in this case. A "reasonable probability" means that the "likelihood of a different result is great enough to undermine [] confidence in the outcome of the trial." *Id.* The aggregation of the failures to disclose should at least allow the defendant some redress at a new sentencing.

Conclusion

The Defendant prays that the current sentence be vacated, and that another sentencing hearing be scheduled in this case. He requests oral argument on this motion.

Dated this 3rd day of January, 2014.


James E. Johnson
Attorney for Mark Lankford

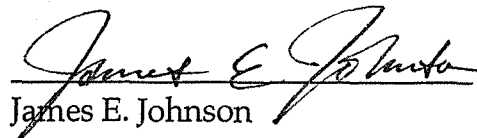
Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail and emailed a PDF copy to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

The Honorable James F. Judd
851 W. Front Street, Apt. 1202
Boise, ID 83702-5860
judgejudd@gmail.com

On the 3rd day of January, 2014.


James E. Johnson

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567 0551
ISBN 6383

Attorney for Mr. Mark Lankford

IDAHO COUNTY DISTRICT COURT
FILED
AT 10:49 O'CLOCK A.M.

JAN 10 2014

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,)	CR 83-20158
)	
Plaintiff,	)	MOTION TO WITHDRAW,
	)	REGARDING THE APPEAL
V.	)	OF ORDER ON MOTION
MARK HENRY LANKFORD,	)	FOR NEW TRIAL;
Defendant,	)	MOTION TO APPOINT STATE
_____	)	APPELLATE PUBLIC DEFENDER

Comes now James E. Johnson, court-appointed attorney for the Defendant, and moves the Court for an order allowing him to withdraw as the attorney for Mr. Lankford for all matters regarding Mr. Lankford's appeal of the Order On Motion For New Trial (entered December 6, 2013).

The undersigned has represented Mr. Lankford since October of 2011. The Defendant intends to appeal the Order. The undersigned seeks to withdraw, in that he has accomplished what he can for Defendant other than filing a Notice of Appeal (which is being filed contemporaneously with this motion) and motions regarding

MOTION TO WITHDRAW, REGARDING THE APPEAL
OF ORDER ON MOTION FOR NEW TRIAL;
MOTION TO APPOINT STATE APPELLATE PUBLIC DEFENDER

ORIGINAL

9.34

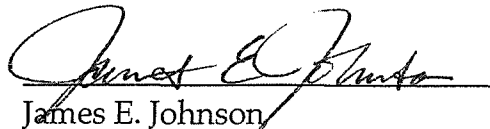
possible re-sentencing. The undersigned has extremely limited experience with appellate work above the district court level, and the State Appellate Public Defender (SAPD) is the much more suitable legal representative of the Defendant.

Furthermore, the SAPD is currently appointed to represent Mr. Lankford in his first motion for a new trial, which has been held in abeyance pending the resolution of his second motion for a new trial.

Therefore, the undersigned moves the Court for an order allowing him to withdraw as the attorney for the Defendant regarding the appeal of the Order On Motion For New Trial, and appointing the State Appellate Public Defender to represent Mr. Lankford.

The undersigned acknowledges that he has filed a memorandum regarding the Defendant's Rule 35 motion, and a motion and memorandum regarding the Defendant's request for a new sentencing pursuant to *Brady* violations. The undersigned further acknowledges that he is an appropriate representative for the Defendant at the trial court level on these matters.

Dated this 9th day of January, 2014.

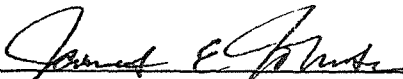

James E. Johnson
Attorney for Mark Lankford

Certificate of Service

I hereby certify that on the 9th day of January, 2014, a true and correct copy of the foregoing document was served by PDF email and U.S. Mail to the following:

LaMont Anderson
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

Erik Lehtinen
State Appellate Public Defender's Office
3050 N. Lake Harbor Lane, ste 100
Boise, ID 83703
elehtinen@sapd.state.idaho.us


James E. Johnson

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567 0551
ISBN 6383

Attorney for Mr. Mark Lankford

IDAHO COUNTY DISTRICT COURT
FILED
AT 10:49 O'CLOCK A.M.

JAN 10 2014

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,)	CR 83-20158
)	
Plaintiff/Respondent	)	NOTICE OF APPEAL
)	
V.)	
MARK HENRY LANKFORD,)	
Defendant/ Appellant.)	
_____)	

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND ITS ATTORNEYS,
LAMONT ANDERSON, DEPUTY ATTORNEY GENERAL, P.O. BOX 83720, BOISE,
IDAHO 83720-0010, AND LAWRENCE WASDEN, ATTORNEY GENERAL, P.O. BOX
83720, BOISE, IDAHO 83720-0010, AND TO THE CLERK OF THE COURT:

Notice is hereby given that:

1. The above- named appellant, Mark Henry Lankford, appeals against the above-
named respondents to the Idaho Supreme Court from the the denial of his Amended
And Consolidated Second Motion For A New Trial (filed April 26, 2013), as effectuated
by the Order On Motion for New Trial, which was entered on December 6, 2013, in the
above-entitled action, the Honorable James Judd presiding.

NOTICE OF APPEAL

ORIGINAL

937

2. The Defendant has a right to appeal to the Idaho Supreme Court, and the order described in Paragraph One above is an appealable order pursuant to Idaho Appellate Rules 11(c)(8).

3. A preliminary statement of the issues which the Defendant/ Appellant asserts on appeal includes:

A. Did the District Court err in granting witness Lane Thomas's claim of a right not to testify at the hearing.

B. Did the District Court err in refusing the admission into evidence of Defendant's Exhibit U, the contents of which were labelled by the Court as "Subpoenaed Materials" (as were the contents of Defendant's Exhibit V) and were sealed.

C. Did the District Court err in refusing admission into evidence of Defendant's Exhibits L and M (transcript and audio recording of Defense interview of Lane Thomas).

D. Did the District Court err in refusing admission into evidence Exhibits LL and KK, (transcript and audio recording of Sam York interview).

E. Did the District Court err in applying a novel test for analyzing *Brady v. Maryland* evidence when the Defendant supplied *Brady* evidence and argument for a new trial.

F. Did the District Court err in denying the Defendant's First Motion in Limine, in which the Defendant moved the Court to take judicial notice of Lane Thomas's testimony in *State v. David Joseph Meister*, Latah County case number CR-2002-01534.

G. The Defendant may augment his statement of the issues, particularly after his current attorney has been replaced by other counsel.

4. Transcripts of the evidentiary hearing in this matter have been prepared.

A. The evidentiary hearing on the Defendant's Consolidated and Amended Second Motion For the hearing date of July 29, 2013 did not have a court reporter present. However, Mr. Keith Evans prepared a transcript from the audio recording. That transcript is 100 pages.

B. The hearing dates of August 5, 6, and 7, 2013 were reported by Ms. Nancy Towler, who prepared the transcript, which is 536 pages.

C. No other transcripts are requested at this time.

5. The Defendant requests that the standard clerk's record be prepared.

A. However, the Defendant requests especially that Exhibits L, M, U,V, KK, and LL be included in the record.

B. In addition, the Defendant requests that the transcript of Lane Thomas's testimony in *State v. David Joseph Meister*, (Latah County case number CR-2002-01534) from the evidentiary hearing held January 26-27, 2011, be

included in the clerk's record. That transcript was attached to the Defendant's First Motion in Limine (filed January 30, 2012) as Exhibit A to that motion.

6. Exhibits U and V were ordered sealed by the trial court, and they remained sealed. It is important that the Defendant's future attorneys be able to view these exhibits, and that the Idaho Supreme Court view these exhibits. (The State currently has permission to view the exhibits.) Therefore the Defendant seeks an order allowing his attorneys to view these exhibits and use them within the parameters the Court allows.

7. Other than as noted above, no other documents are requested to be included in addition to those included under Rule 28 of the Idaho Appellate Rules.

8. I certify that:

A. A copy of this Notice of Appeal was served on the court reporters, although the transcripts are already prepared.

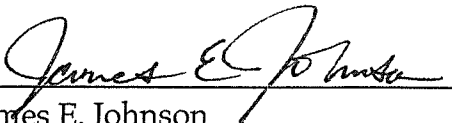
B. The Defendant/ Appellant is exempt from paying any transcript fee because he is indigent, without funds, and the undersigned attorney was appointed to represent the Defendant/ Appellant.

C. The estimated fee for preparation of the clerk's record has not been paid; counsel for the defendant is court-appointed and the court should order preparation of the record at public expense.

D. The appellate filing fee is zero dollars pursuant to IAR 23(a)(8).

E. Service has been made upon all parties required to be served pursuant to Rule 20 of the I.A.R. and the Attorney General of the State of Idaho pursuant to I.C. § 67-1401(1).

Dated this 9th day of January, 2014.


James E. Johnson
Attorney for Mark Lankford

Certificate of Service

I hereby certify that on the 9th day of January, 2014, a true and correct copy of this Notice Of Appeal was served by PDF email:

Nancy Towler, Court Reporter
nancytowler@yahoo.com

Keith Evans, Court Reporter
kkreport@wildblue.net

by U.S. Mail to:
Lawrence Wasden, Attorney General
P.O. Box 83720
Boise, ID 83720-0010

and by PDF email and U.S. Mail to the following:

LaMont Anderson
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov


James E. Johnson

James E. Johnson
604 S. Washington Street, suite 3
Moscow, ID 83843
208 882 1357, fax 208 567-0551
email: jay.dr.juris@gmail.com
ISBN 6383

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 10:11 O'CLOCK A.M.

JAN 13 2014

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

Attorney for Mr. Mark Lankford

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

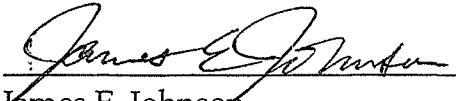
STATE OF IDAHO,)	CR 83-20158
)	
Plaintiff,)	
)	
V.	)	MOTION FOR ORDER
	)	FOR PAYMENT FOR
	)	TRANSCRIPTS
MARK HENRY LANKFORD,)	
Defendant.)	
_____)	

James E. Johnson, court-appointed attorney for Mr. Mark Lankford, moves the Court approving of payment for preparation of six transcripts.

The transcripts were prepared by Mr. Keith Evans (K&K Reporting) a court reporter in the Second Judicial District. The transcripts were prepared for use as exhibit to be attached to the memorandum in support of the Defendant's Rule 35 motion. The transcripts are of hearings on the following dates: January 22, 2009; February 12, 2009; April 2, 2009; November 19, 2009; March 1, 2011; and October 11, 2011.

The cost of preparation by Mr. Evans is \$256.75. His invoice is attached.

Dated this 10th day of January, 2014.


James E. Johnson
attorney for Mark Lankford

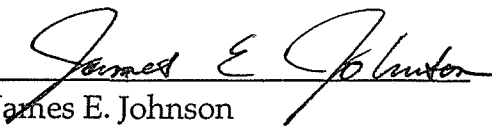
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

Judge James Judd
851 W. Front Street, Apt. 1202
Boise, ID 83702

On the 10th day of January, 2014


James E. Johnson

1 MR. JAMES E. JOHNSON

December 29, 2013

2 Attorney at Law

3 604 S. Washington, Suite 3

4 Moscow, ID 83843

5

6 Re: State vs. Lankford

7

8 An original and one emailed copy of

9 various hearings consisting of 79 pages \$ 256.75

10

11

12 TOTAL DUE \$ 256.75

13

14 ***** Please make checks payable to K & K Reporting

15 K & K Reporting

16 P.O. Box 574

17 Lewiston, Idaho 83501

18 208-743-1380

19 ID # 541989308

20

21

22

23

24

25

K & K REPORTING (208) 743-1380
kkreport@wildblue.net

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 567-0551
ISB #6383

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 4:00 O'CLOCK 1 M.

JAN 16 2014

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,
Plaintiff,

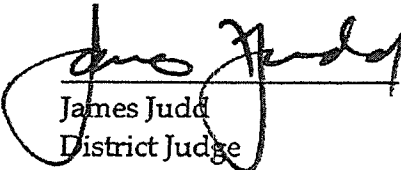
Case No. CR-83-20158

ORDER FOR PAYMENT FOR
LEGAL SERVICES

v.
MARK LANKFORD,
Defendant.

THE COURT, having examined the Statement for Legal Services submitted herein by assigned defense counsel, James E. Johnson, (for the month of December, 2013) hereby approves the same and orders payment of Two Thousand One Hundred and Eighty-Seven Dollars and Ten Cents (\$2187.10).

DATED this 15th day of January, 2014.


James Judd
District Judge

ORIGINAL

ORDER-FOR PAYMENT FOR LEGAL SERVICES

IDAHO COUNTY DISTRICT COURT
FILED
AT 4:00 O'CLOCK P.M.

JAN 16 2014

DOCKETED

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

THE STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

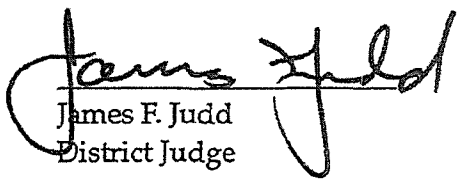
Defendant.

Case No. CR-83-20158

ORDER FOR PAYMENT
FOR SIX TRANSCRIPTS

The Defendant has submitted an invoice for the services of Keith Evans (K&K Reporting). The claimed expenses are reasonable. It is hereby ordered that Idaho County pay Keith Evans \$256.75 for his services, as described on his invoice dated December 29, 2013.

Dated this 15th day of January, 2014.


James F. Judd
District Judge

ORDER FOR PAYMENT FOR SIX TRANSCRIPTS

ORIGINAL

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the ORDER FOR PAYMENT FOR SIX TRANSCRIPTS were served on the following in the manner indicated below:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

☒ U.S. mail
☐ PDF email
☐ fax 208 983 3919
☐ hand delivery

Jay Johnson
Attorney at Law
604 S. Washington, ste 3
Moscow, Idaho 83843

☒ U.S. mail
☐ PDF email
☐ fax 208 567 0551
☐ hand delivery

Kathy Ackerman, County Clerk
C/O Kathy Johnson, deputy clerk
Idaho County Courthouse
320 W Main Street
Grangeville, Idaho 83530

☐ U.S. Mail
☐ fax 208 983 2376
☐ PDF email
☐ hand delivery

dated this 17 day of January, 2014


Deputy Clerk

IDAHO COUNTY DISTRICT COURT
FILED
AT 4:00 O'CLOCK P.M.

JAN 16 2014

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

DOCKETED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,)	CR 83-20158
)	
Plaintiff,	)	ORDER ALLOWING WITHDRAWAL
	)	OF COUNSEL FOR APPEAL;
V.	)	ORDER APPOINTING STATE
MARK HENRY LANKFORD,	)	APPELLATE PUBLIC DEFENDER
Defendant,)	
_____)	

After reviewing the records and files in this case and after considering the
Motion To Withdraw Regarding the Appeal Of Order On Motion For New Trial; Motion
To Appoint State Appellate Public Defender, and being fully advised in the premises,

It is hereby ordered that James E. Johnson is allowed to withdraw from
representing Mr. Lankford in the appellate case. Mr. Johnson shall continue to represent
Mark Lankford in other aspects of this case at the trial court level.

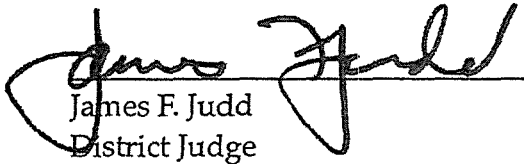
It is further ordered that the Office of the State Appellate Public Defender is
appointed to represent Mark Henry Lankford in his pending appeal of this Court's

ORDER ALLOWING WITHDRAWAL OF COUNSEL FOR APPEAL;
ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER

ORIGINAL¹

Order On Motion For New Trial to the Idaho Supreme Court or Court of Appeals.

Dated this 15th day of January, 2014.


James F. Judd
District Judge

Clerk's Certificate of Service

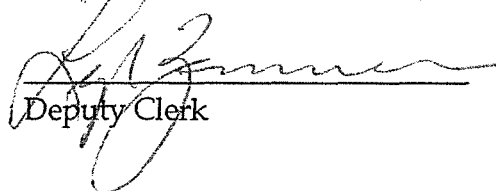
I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. mail and/or emailed to:

LaMont Anderson, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010
lamont.anderson@ag.idaho.gov

Jay Johnson
604 S. Washington, suite 3
Moscow, ID 83843
jay.dr.juris@gmail.com

Erik Lehtinen
State Appellate Public Defender's Office
3050 N. Lake Harbor Lane, ste 100
Boise, ID 83703
elehtinen@sapd.state.idaho.us

On the 17 day of January 2014.

KATHY M. ACKERMAN, CLERK

Deputy Clerk

ORDER ALLOWING WITHDRAWAL OF COUNSEL FOR APPEAL;
ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER

COURT MINUTES

CR-1983-0020158

State of Idaho vs. Mark Henry Lankford

Hearing type: Motion

Hearing date: 2/25/2014

Time: 12:31 pm

Judge: James F Judd

Courtroom: District

Court reporter: Linda Carlton

Minutes Clerk: KATHYJ

Tape Number: District

Defense Attorney: James Johnson

Prosecutor: Attorney General, Lamont Anderson

1:02 Court addresses counsel

Johnson argues in support of motion for new sentencing

1:03 Court questions Johnson re: authority for new sentencing

Johnson responds

Court questions Johnson further

1:04 Johnson responds and argues further in the Seback decision

1:05 Court interjects and addresses Johnson further

Johnson replies to the court

Court addresses Johnson and states that before he continues his argument that the assumptions of Brady violations is off the table

1:06 Johnson argues in support of new sentencing

1:16 Anderson argues in opposition to motion for new trial

1:20 Johnson argues in rebuttal

1:22 Court addresses counsel re: Rule 35

1:22 Johnson argues in support of Rule 35

1:28 Court interjects, objections were heard during sentencing process

Johnson responds and believes one of the points was not ruled on and argues further

1:38 Anderson argues in opposition to Rule 35

1:43 Court addresses counsel re: Payne

an

1:43 Johnson questions the court re: Payne
Anderson responds

1:45 Court questions Johnson re: only victims can testify at sentencing
Johnson responds and refers to Payne

1:46 Court questions Johnson re: 19-5306

1:47 Johnson responds to the court

1:48 Court responds and addresses Johnson re: authority for testify

1:49 Anderson responds to the court

1:50 Johnson argues in rebuttal

1:51 Court interjects
Johnson responds and argues further

1:52 Lankford addresses the court
Court responds

1:53 Recess

Signed: _____

District Judge

Signed: _____

Deputy Court Clerk

DOCKETED

IDAHO COUNTY DISTRICT COURT
FILED
AT 1:03 O'CLOCK P.M.

MAR 10 2014

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 567-0551
ISB #6383

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,
Plaintiff,

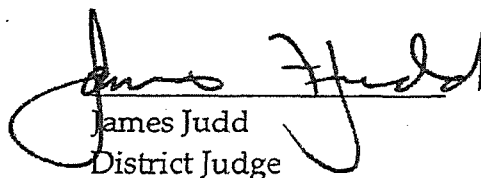
v.
MARK LANKFORD,
Defendant.

Case No. CR-83-20158

ORDER FOR PAYMENT FOR
LEGAL SERVICES

THE COURT, having examined the Statement for Legal Services submitted
herein by assigned defense counsel, James E. Johnson, (for the month of February, 2014)
hereby approves the same and orders payment of One Thousand and Three Dollars
and Zero Cents (\$1003.00).

DATED this 10th day of March, 2014.


James Judd
District Judge

ORIGINAL

ORDER-FOR PAYMENT FOR LEGAL SERVICES

IDAHO COUNTY DISTRICT COURT
AT 4:38 FILED P.M.
O'CLOCK

FEB 12 2014

James E. Johnson
604 S. Washington St., #3
Moscow, Idaho 83843
Telephone: (208) 882-1357
Fax: (208) 567-0551
ISB #6383

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,
Plaintiff,

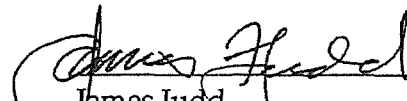
) Case No. CR-83-20158

) ORDER FOR PAYMENT FOR
) LEGAL SERVICES

v.
MARK LANKFORD,
Defendant.

THE COURT, having examined the Statement for Legal Services submitted
herein by assigned defense counsel, James E. Johnson, (for the month of January, 2014)
hereby approves the same and orders payment of One Thousand Two Hundred and
Sixty-Seven Dollars and Thirty-Eight Cents (\$1267.38).

DATED this 12th day of February, 2014.


James Judd
District Judge

ORDER-FOR PAYMENT FOR LEGAL SERVICES

ORIGINAL

IDAHO COUNTY DISTRICT COURT
AT 3:58 FILED
O'CLOCK P.M.

MAY - 1-2014

DOCKETED

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR 1983 20158

ORDER ON MOTION
FOR RE-SENTENCING
PURSUANT TO *BRADY*
VIOLATIONS

On February 13, 2008 Mark Henry Lankford (Lankford) was convicted of two counts of First Degree Murder for the 1983 killing of Robert and Cheryl Bravence, and on July 17, 2008 Lankford was sentenced to serve two fixed life sentences. The appeal of these convictions is still pending. On January 3, 2014 Lankford filed this Motion for Re-sentencing Pursuant to *Brady* Violations.

Lankford relies on *Sivak v. Harrison*, 658 F.3d 898 (9th Cir. 2011), a federal *habeas corpus* proceeding, as the authority for this motion. Even if one were to assume the truth of the *Brady* violation asserted by Lankford, he has failed to direct the court to any basis for assuming subject matter jurisdiction over this motion.

The Court of Appeals in *State v. Wilson*, 136 Idaho 771, 772, 40 P.3d 129, 130 (Ct. App. 2001) discussed the trial courts subject matter jurisdiction after the filing of a notice of appeal stating:

Once a notice of appeal has been filed, a trial court's jurisdiction to take further action is limited. Idaho Appellate Rule 13(c) enumerates the types of actions that may be taken by a trial court during the pendency of a criminal appeal. The powers specified in that rule include the authority to take such actions as settling the transcript on appeal, I.A.R. 13(c)(1), ruling upon a motion for a new trial, I.A.R. 13(c)(2), granting, modifying or revoking probation, I.A.R. 13(c)(6), and ruling on a motion to correct or reduce a sentence, I.A.R. 13(c)(11). Rule 13(c) also includes a "catch-all" provision in subsection (10) which authorizes the district court to "[e]nter any other order after judgment affecting the substantial rights of the defendant as authorized by law."

Of these potential subject matter jurisdiction alternatives, only I.A.R. 13(c)(11) relating to ruling on a motion to correct or reduce a sentence under I.C.R. 35 is of possible application to the instant motion.

I.C.R. 35 provides two methods to vest the trial court with subject matter jurisdiction to deal with Lankford's motion: 1st) to correct an illegal sentence at anytime or 2nd) to correct a sentence that has been imposed in an illegal manner or to reduce a sentence within 120 days after the sentence is imposed.

Although Lankford's motion does not specify a legal basis for setting aside his prior sentencing procedure, he states that the procedure was unfair and implies that the sentence was imposed in an illegal manner. Lankford makes no claim in this motion that the sentence imposed on July 17, 2008, as evidenced by the Judgment of Conviction entered on July 22, 2008, was an illegal sentence.

The method of vesting the trial court with subject matter jurisdiction to correct a sentence that has been imposed in an illegal manner is to file an I.C.R. 35 motion. That vesting of subject matter jurisdiction contains within it a further limitation by requiring the

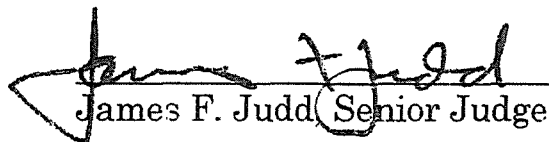
motion to be filed within 120 days after the filing of a judgment of conviction. See *State v. Peterson*, 148 Idaho 610, 613, 226 P.3d 552, 555 (Ct. App. 2010).

Lankford's instant Motion for Re-sentencing was filed on January 3, 2014 some 1,991 days after the filing of Lankford's Judgment of Conviction on July 22, 2008. The timely filing of an I.C.R. 35 motion is essential to vest the trial court with subject matter jurisdiction. *State v. Bowcut*, 140 Idaho 620, 97 P.3d 487 (Ct. App. 2004).

Lankford's instant Motion for Re-sentencing was untimely filed and this court is without jurisdiction to consider it on its merits.

BASED ON THE FOREGOING, IT IS ORDERED that Lankford's instant Motion for Re-sentencing is denied as untimely.

ENTERED this 17th day of March, 2014.


James F. Judd (Senior Judge)

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of May, 2014 a true and correct copy of the foregoing was mailed, postage prepaid, or if the Fax service block is checked, sent a copy via facsimile, or if the PDF Email service block is checked, sent a PDF copy by email to:

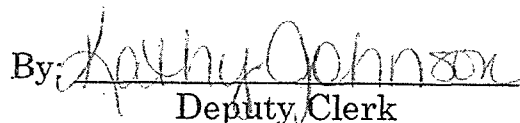
L. LaMont Anderson
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

☐ Fax Service
(208) 854-8074
☒ PDF Email Service
Lamont.anderson@ag.idaho.gov

James E. Johnson
Attorney at Law
604 S. Washington St., Suite 3
Moscow, Idaho 83843

☐ Fax Service
(208) 567-0551
☒ PDF Email Service
jay.dr.juris@gmail.com

Clerk of the District Court

By: 
Deputy Clerk

IDAHO COUNTY DISTRICT COURT
AT 3:59 FILED
O'CLOCK P.M.

MAY - 1 2014

DOCKETED

KATHY MACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,

Plaintiff,

vs.

MARK HENRY LANKFORD,

Defendant.

Case No. CR 1983 20158

ORDER ON
ICR 35 MOTION

On October 11, 2007 counsel was appointed to represent Mark Henry Lankford (Lankford) on his re-trial on two counts of First Degree Murder for the 1983 killing of Robert and Cheryl Bravence. From October 11, 2007 to the present Lankford has continuously had appointed counsel to represent his interests in the trial court on these charges.

Following a jury trial, on February 13, 2008 Lankford (Lankford) was convicted of the two counts of First Degree Murder for the 1983 killing of Robert and Cheryl Bravence. On March 27, 2008 Lankford's trial counsel filed a Motion for New Trial. On July 17, 2008 Lankford, represented by his trial counsel, was sentenced for these crimes to serve two fixed life sentences. The Judgment of Conviction was filed on July 22, 2008. Lankford's trial counsel filed a Notice of Appeal on August 22, 2008. On August 28, Lankford's trial counsel moved for the appointment

of the State Appellate Public Defender to handle Lankford's appeal. The appeal of these convictions is still pending.

On November 18, 2008 Lankford submitted his self-prepared Motion for Reduction or Correction of Sentence, ICR 35 to prison authorities for mailing to the Idaho County Prosecuting Attorney at P.O. Box 463, Grangeville, Idaho 83530. This document was subsequently filed in this case on November 21, 2008. The State filed an objection to the timeliness of the motion on December 5, 2008.

In a series of hearings on January 22, 2009, February 12, 2009, April 2, 2009, and November 19, 2009 the State continued to assert the lack of subject matter jurisdiction raised in its December 5, 2008 objection. The then presiding judge indicated that rather than ruling on the jurisdiction issue, which if he was wrong would result in the matter being referred back to him after appeal, he would hear the merits of the motion so that the appellate court's could resolve the matter in a single appeal.

Following the November 19, 2009 hearing there were several changes in Lankford's appointed counsel, the presiding judge, and the prosecutor. The I.C.R. 35 motion was mentioned during scheduling hearings on March 1, 2011 and October 11, 2011.

The issue of the pendency of the I.C.R. 35 motion was again raised on August 7, 2013 at the close of the evidentiary hearing on Lankford's Amended and Consolidated Second Motion for New Trial. As a consequence the parties were given the opportunity for additional briefing and oral argument was heard on February 25, 2014.

In its Supplemental Response to Defendant's Motion for Correction or Reduction of Sentence the State renewed its objection to this court's

subject matter jurisdiction based upon the untimely filing of the motion. Lankford relies on the "mailbox rule" to establish the timeliness of the filing together with an assertion that the prior judges assigned to this case after July 22, 2008 had already accepted the filing of the motion.

Initially it should be noted that while the application of the "mailbox rule" has been discussed, no order has been entered that addresses the subject matter jurisdiction issue. In *State v. Peterson*, 148 Idaho 610, 612-13, 226 P.3d 552, 554-55 (2010) the Idaho Supreme Court addressed issues relating to I.C.R. 35 motion subject matter jurisdiction holding:

[A] challenge to a court's subject matter jurisdiction may be raised at any time during the course of the proceedings, even for the first time on appeal, and may not be waived by the parties. *State v. Armstrong*, 146 Idaho 372, 374, 195 P.3d 731, 733 (Ct.App.2008); *State v. McCarthy*, 133 Idaho 119, 122, 982 P.2d 954, 957 (Ct.App.1999). The issue may even be raised sua sponte by a trial or appellate court. *State v. Kavajecz*, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003); *Armstrong*, 146 Idaho at 374, 195 P.3d at 733. An order entered without subject matter jurisdiction is void. *Troupis v. Summer*, 148 Idaho 77, 79, 218 P.3d 1138, 1140 (2009); *Andre v. Morrow*, 106 Idaho 455, 459, 680 P.2d 1355, 1359 (1984); *Sierra Life Ins. Co. v. Granata*, 99 Idaho 624, 626-27, 586 P.2d 1068, 1070-71 (1978); *Armstrong*, 146 Idaho at 374, 378, 195 P.3d at 733, 737.

The subject matter jurisdiction issue must be addressed before any other issues raised by the I.C.R. 35 motion can be addressed.

The Court of Appeals in *State v. Wilson*, 136 Idaho 771, 772, 40 P.3d 129, 130 (Ct. App. 2001) discussed the trial courts subject matter jurisdiction after the filing of a notice of appeal stating:

Once a notice of appeal has been filed, a trial court's jurisdiction to take further action is limited. Idaho Appellate

Rule 13(c) enumerates the types of actions that may be taken by a trial court during the pendency of a criminal appeal. The powers specified in that rule include the authority to take such actions as settling the transcript on appeal, I.A.R. 13(c)(1), ruling upon a motion for a new trial, I.A.R. 13(c)(2), granting, modifying or revoking probation, I.A.R. 13(c)(6), and ruling on a motion to correct or reduce a sentence, I.A.R. 13(c)(11). Rule 13(c) also includes a "catch-all" provision in subsection (10) which authorizes the district court to "[e]nter any other order after judgment affecting the substantial rights of the defendant as authorized by law."

Of these potential subject matter jurisdiction alternatives, only I.A.R. 13(c)(11) relating to ruling on a motion to correct or reduce a sentence under I.C.R. 35 is of possible application to the instant motion.

I.C.R. 35 provides two methods to vest the trial court with subject matter jurisdiction to deal with Lankford's motion: 1st) to correct an illegal sentence at anytime or 2nd) to correct a sentence that has been imposed in an illegal manner or to reduce a sentence within 120 days of the filing of the Judgment of Conviction.

Although Lankford's motion in the body indicates that it is to correct an "illegal sentence", that phrase is a term of art and the Idaho Supreme Court in *State v. Clements*, 148 Idaho 82, 87, 218 P.3d 1143, 1148 (2009) held

[T]hat the interpretation of "illegal sentence" under Rule 35 is limited to sentences that are illegal from the face of the record, i.e., those sentences that do not involve significant questions of fact nor an evidentiary hearing to determine their illegality.

A review of the Judgment of Conviction entered in this case on July 22, 2008 reveals that Lankford was found guilty of two counts of Murder in the First Degree and was sentenced on each count to serve a fixed life

term with the sentences to run consecutively. These sentences are within the range of sentences authorized by I.C. § 18-4004 and are not illegal.

As indicated above, the second method of vesting the trial court with subject matter jurisdiction is an I.C.R. 35 motion to correct a sentence that has been imposed in an illegal manner or to reduce a sentence. That vesting of subject matter jurisdiction contains within it a further limitation by requiring the motion to be filed within 120 days after the filing of a judgment of conviction. See *State v. Peterson*, 148 Idaho 610, 613, 226 P.3d 552, 555 (Ct. App. 2010).

Lankford's self-prepared Motion for Reduction or Correction of Sentence, ICR 35 was filed on November 21, 2008 some 122 days after the filing of Lankford's Judgment of Conviction on July 22, 2008. The timely filing of an I.C.R. 35 motion is essential to vest the trial court with subject matter jurisdiction.

Lankford relies on the "mailbox rule" to have the filing relate back to his placing the motion in the prison mail system on November 18, 2008, a time within the 120 day rule. The Court of Appeals in *State v. Johnson*, 152 Idaho 56, 62-63, 266 P.3d 1161, 1167-68 (Ct. App. 2011) explained the rule and determined it applied to I.C.R. 35 motions, holding:

The mailbox rule deems a pro se inmate's document filed as of the date it was submitted to prison authorities for the purpose of mailing to the court for filing. *Munson v. State*, 128 Idaho 639, 641, 917 P.2d 796, 798 (1996); see also *Hayes v. State*, 143 Idaho 88, 90-91, 137 P.3d 475, 477-78 (Ct.App.2006)

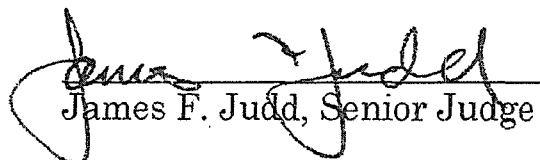
Therefore, we see no reason not to apply the mailbox rule to Rule 35 motions filed by pro se inmates.

An important limitation on the application of the mailbox rule is that it is only of use to "pro se" inmates, that is, to inmates who are not represented by counsel. Lankford, at all relevant times, in this proceeding has been represented by appointed counsel and has not made an unequivocal request to discharge his appointed lawyers and to proceed pro se. Lankford's appointed trial lawyers were actively representing him on his new trial motion. Lankford is not entitled to the benefits of the mailbox rule and his I.C.R. 35 motion was untimely filed.

The Court of Appeals in *State v. Parrish*, 110 Idaho 599, 716 P.2d 1371 (Ct. App. 1986), *State v. Hoffman*, 114 Idaho 139, 754 P.2d 452 (Ct. App. 1988), *State v. Hocker*, 119 Idaho 105, 803 P.2d 1011 (Ct. App. 1991) and *Murray v. State*, 121 Idaho 918, 828 P.2d 1323 (Ct. App. 1992) has indicated that untimely I.C.R. 35 motions can still vest the court with subject matter jurisdiction under special circumstances, such as the delay in filing being caused by ineffective assistance of counsel or misleading conduct by the state. In the 1,920 days between the untimely filing of the motion on November 21, 2008 and the hearing on February 25, 2014 no showing or even a claim of ineffective assistance of counsel or other special circumstance was shown or even alleged.

IT IS ORDERED that Lankford's I.C.R. 35 Motion filed on November 21, 2008 was untimely, that this court is without jurisdiction to consider it on its merits, and it is therefore denied.

ENTERED this 17th day of March, 2014.


James F. Judd, Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of ^{May}~~March~~, 2014 a true and correct copy of the foregoing was mailed, postage prepaid, or if the Fax service block is checked, sent a copy via facsimile, or if the PDF Email service block is checked, sent a PDF copy by email to:

L. LaMont Anderson
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

☐ Fax Service
(208) 854-8074
☒ PDF Email Service
Lamont.anderson@ag.idaho.gov

James E. Johnson
Attorney at Law
604 S. Washington St., Suite 3
Moscow, Idaho 83843

☐ Fax Service
(208) 567-0551
☒ PDF Email Service
jay.dr.juris@gmail.com

Clerk of the District Court

By: James E. Johnson
Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

State of Idaho,)	
Plaintiff/Respondent,	)	IDAHO COUNTY NO. CR 83-20158
	)	S.C. No. 35617
vs.)	
	)	CLERK'S CERTIFICATE
Mark H. Lankford,)	
Defendant/Appellant.)	

STATE OF IDAHO)
County of Idaho)

I, Kathy Johnson, Deputy Clerk of the District Court of the Second Judicial District, of the State of Idaho, in and for the County of Idaho, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction, and is a true, full and correct Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I, do further certify, that all exhibits, offered or admitted in the above entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the court reporter's transcript and the clerk's record, as required by Rule 31 of the Idaho Appellate Rules.

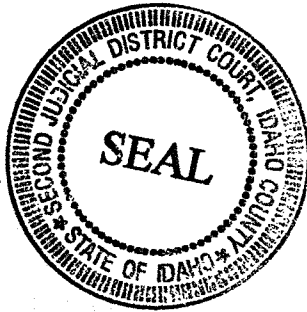
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
said Court at Grangeville, Idaho, this 27th day of May 2014.

Kathy M. Ackerman, Clerk

BY:

Kathy Johnson

Kathy Johnson
Deputy Clerk



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

State of Idaho,
Plaintiff/Respondent,

vs.

Mark H. Lankford,
Defendant/Appellant.

)
)
) Supreme Court No. 35617

)
) Idaho County No. CR 83-20158

)
) CLERK'S CERTIFICATE
) RE: EXHIBITS
)

STATE OF IDAHO)

)
County of Idaho)

I, Kathy Johnson, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Idaho, hereby certify that the following are all the exhibits admitted or rejected to-wit:

See Attached Exhibit A

Dated this 27th day of May 2014.

Kathy M. Ackerman, Clerk

By: Kathy Johnson
Deputy Clerk

EXHIBIT LIST

Case No. CR 83-20158

Date: August 5, 2013

State of Idaho
Plaintiff

Garrett Anderson
Attorney

VS.

Mark Hankford
Defendant

James Johnson
Attorney

All Exhibits

Motion Hearing

No.	Description	Not Offered	Admitted	Denied	With- drawn	Original Sub.
✓ 1e8	Emails of J. Hankford's employees		✓			
A	Newspaper Article 6/23/84			✓		
E	B. Hankford letter 12/25/99			✓		
G	B. Hankford Petition for Writ of Habeas Corpus			✓		
H	B. Hankford Affd 4/30/10			✓		
L	Statement of J. Thomas			✓		
M	CID			✓		
O	Letter from Kirk MacGregor to Gary Amendola				✓	
✓ S	Judgment of Conviction		✓			
✓ T	Order Suspending		✓			
U	Sealed Copies of Subpoena			✓		
V	" " "			✓		

Exhibit A

9/10/7

EXHIBIT LIST

Case No. CR 83-20158Date: August 5, 2013State of Idaho
PlaintiffGamont Andersson
Attorney

vs.

Mark Hankford
DefendantJames Johnson
AttorneyAll ExhibitsMotion Hearing

No.	Description	Not Offered	Admitted	Denied	With- drawn	Original Sub.
✓ W	transcript		✓			
✓ X	Minutes B.O.C.C. 3/3/08		✓			
✓ Y	Copy of Warrant/Check		✓			
✓ Z	Copy of Warrant/Check		✓			
✓ AA	Idaho County Claim Form		✓			
✓ BB	Idaho County Claim Form		✓			
✓ EE	McGregor letter to BOCC		✓			
KK	CID			✓		
LL	transcript			✓		
✓ MM	Death Certificate		✓			
✓ NN	transcript		✓			
✓ OO	transcript		✓			
✓ QQ	trial testimony		✓			
✓ RR	trial testimony		✓			
✓ SS	Sgt Stuzzell Affd		✓			

EXHIBIT LIST

Case No. CR 83-20158

Date: August 5, 2013

State of Idaho
Plaintiff

Clamont Anderson
Attorney

VS.

Mark Hankford
Defendant

James Johnson
Attorney

De Exhibits

Motion Hearing

[illegible]

EXHIBIT LIST

Case No. CR 83-20158Date: July 29, 2013State of Idaho
PlaintiffSamuel Anderson
Attorney

VS.

Mark N. Hankford
DefendantJay Johnson
AttorneyExhibitsMotion Hearing

No.	Description	Not Offered	Admitted	Denied	With-drawn	Original Sub.
A	Newspaper Article			✓		
B	Letter from B. Hankford	✓				
C	transcript			✓		
E	Letter from B. Hankford			✓		
F	" " "	✓				
G	Petition for writ B. Hankford					
H	Emails	✓				
OD	transcript	✓				
J	Affidavit of J. Guernsey			✓		